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No. 84-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON,
Petitioner,

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *et al.*,
Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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I. JUDICIAL AND ADMINISTRATIVE OPINIONS

A. Opinion Below

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 82-7561
82-7562
and 83-7038

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION,
Petitioner,

MALCOLM BALDRIGE, Secretary of Commerce,
Petitioner,

NATIONAL WILDLIFE FEDERATION,
Petitioner-Intervenor,

and

WASHINGTON STATE DEPARTMENT OF FISHERIES and WASHINGTON STATE DEPARTMENT OF GAME,
Intervenors,

vs.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent,

and

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON,
Intervenor.

On Review of an Order of the
Federal Energy Regulatory Commission
Argued and submitted December 8, 1983

OPINION

Before: ANDERSON and FLETCHER, Circuit Judges, and EAST,* District Judge.

J. BLAINE ANDERSON, Circuit Judge:

On November 23, 1982, the Federal Energy Regulatory Commission (FERC or Commission) upheld an order granting Chelan County Public Utility District No. 1 (Chelan) a new license for the operation of Rock Island Hydropower Project No. 943. The license is for a forty-year term. The National Marine Fisheries Service of the Department of Commerce (NMFS), the Washington State Departments of Fisheries and Game (Washington), the National Wildlife Federation (NWF), and the Confederated Tribes and Bands of the Yakima Indian Nation (Yakima) petition this court for review. We grant the petitions, set aside the license, and remand to FERC.

I. BACKGROUND

A. *Facts*

The Rock Island Project was originally licensed on January 21, 1930 by the Federal Power Commission. The license authorized the construction of Rock Island Dam, the first dam to span the Columbia River. In 1952, Chelan became a joint licensee of the project and in 1980 became the sole licensee.

Rock Island originally had a single powerhouse. In 1974, the license was amended, allowing construction of a second powerhouse. The second powerhouse was completed in 1979 and has increased the generating capacity of Rock Island to 622.5 megawatts.

Rock Island is one of ten hydroelectric projects on the Columbia River. Six of those projects are federally owned and operated. Four, including Rock Island, are owned and operated by three public utility districts pursuant to license. These four projects utilize five dams and are

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* The Honorable William G. East, Senior United States District Judge, District of Oregon, sitting by designation.

located next to one another on the middle stretch of the Columbia.

As with all dams, Rock Island has a significant impact on the environment, especially anadromous fish runs. In the Pacific Northwest, juvenile anadromous fish (chinook, coho and sockeye salmon, and steelhead trout) utilize the Columbia River and its tributaries to migrate to the Pacific Ocean where they mature. As adults, the fish travel the same route upstream to spawn. Rock Island Dam has fish ladders and other facilities to assist adult fish migrating upstream, but it has no comparable facilities to enable the juvenile fish to pass through or around the dam. The result is that a significant number of juvenile salmon and steelhead die either as a result of passing through the turbines or because of a phenomenon called "holding over." Holding over occurs when juvenile fish prematurely end migration because of the delays in traveling through impounded water and in trying to pass around a dam. It is the petitioner's concern with the effect of Rock Island Dam on juvenile fish which forms the basis of their appeal.

B. *Procedure*

The pertinent procedural background of this case begins in 1973 when Chelan applied for and subsequently received an amended license allowing it to construct the second powerhouse. 51 F.P.C. 1141 (1974). At that time, NMFS and Washington intervened and sought the construction of passage facilities for juvenile fish as a condition to the amended license. The Federal Power Commission (FPC), whose functions were transferred to the Federal Energy Regulatory Commission in 1977, did not impose the conditions. Instead, it added "Article 48" to the license which required Chelan to conduct studies in conjunction with federal and state fishery agencies on the effects of the project on the fishery. The result of these studies was to be a revised "Exhibit S" (fish and

wildlife report). This report was to be submitted three years after the second powerhouse was operational. Also, Article 21 of the amended license contained a "reopener" clause which reserved to FERC the right to require modification of the dam's facilities and operations as deemed reasonable and necessary for the development of fish and wildlife resources.

In 1976, Washington petitioned the Commission to modify operations at the Priest Rapids Dam, which is two dams below Rock Island on the Columbia. Similar petitions were filed requesting the modification of operations at four other dams, including Rock Island. All these petitions sought the amendment of existing licenses in order to implement fish protection measures. These five dams are operated by three local public utility districts, including Chelan. In 1979, the Commission consolidated these petitions into a single action, the Mid-Columbia Proceeding. 6 F.E.R.C. ¶ 61,210.

The Commission divided the Mid-Columbia Proceeding into two phases. In Phase I, the Commission ordered an expedited hearing to consider any interim measures necessary to protect the Spring 1979 downstream migration of smolts. In Phase II, the Commission ordered that the usual procedures be followed to reach a long-term solution to the anadromous fish problem. In late 1979, the parties to the Mid-Columbia Proceeding (NMFS, Washington, Oregon Department of Fish & Wildlife, Idaho Department of Fish & Game, Chelan, and the other two licensees) proposed an interim settlement agreement for Phase II. FERC approved the settlement in March, 1980. 10 F.E.R.C. ¶ 61,257. It provides for minimum flows and spills at designated times until 1984. In the meantime, a five-year study investigating a variety of fish protection measures was to commence. Importantly, the Commission recognized the inconclusive nature of the settlement, stating that it "is obviously an interim measure designed to

gather data rather than a final resolution of appropriate flows."

In 1977, Chelan applied for a new license, its original fifty-year license being due to expire in January, 1980. In July, 1978, FERC issued its public notice of the application and asked interested parties to comment or intervene by September 18, 1978. NMFS and Washington petitioned to intervene, each noting that further studies were necessary to gauge the effect of the recent modifications to Rock Island and that fish protection measures should be incorporated into the new license. FERC granted intervention.

In January, 1980, and January, 1981, FERC issued annual licenses pending its final decision. Then, on May 13, 1981, the Director of the FERC Office of Electric Power Regulation issued a new license to Chelan, allowing it to continue operation of the project for another forty years. 14 F.E.R.C. ¶ 62,187. Apparently, NMFS and Washington had not been contacted again by FERC after being granted leave to intervene. Also, no hearings were ever held on the relicensing question.

The Director was of the opinion that FERC's obligations to consider fishery issues were being fulfilled by the related Mid-Columbia Proceeding. He noted that the new license contained a "reopener" clause which would permit FERC to impose any necessary fish protection measures once the continuing studies under the Mid-Columbia Proceeding were completed, as well as those done to complete the Revised Exhibit S. Finally, the Director found that no environmental impact statement was required prior to licensing because the continued operation of the project did not involve any changes in the status quo.

NMFS appealed the order to the Commission. Yakima joined in the appeal. The National Wildlife Federation filed a separate petition appealing the order. Washington

joined later in NMFS's appeal. The petitioners claimed that the order failed to comply with the Federal Power Act (FPA), the Fish and Wildlife Coordination Act (FWCA), the Pacific Northwest Power Planning & Conservation Act (PNPA), the National Environmental Protection Act (NEPA), and Commission regulations. In essence, petitioners claim that fishery issues must be considered prior to licensing and that they may not be deferred to a separate proceeding. Without a hearing, FERC issued its order on appeal, rejecting NWF's and Washington's appeal as untimely and affirming the Director's opinion that fishery measures could be implemented in the license once the Mid-Columbia Proceeding and the Revised Exhibit S were completed. 19 F.E.R.C. ¶ 61,223. The petitioners requested a rehearing and on November 23, 1983, the Commission again rejected their claims. 21 F.E.R.C. ¶ 61,264. The petition for review to this court followed.

II. JURISDICTION

NMFS, having filed a petition for review in this court within sixty days of the denial of its application for rehearing by the Commission, is properly before this court. 16 U.S.C. § 825*l*(b). Chelan and Washington were granted leave to intervene in the appeal pursuant to Fed. R. App. P. 15(d). No one contests the order granting intervention to these interested parties.

Yakima and NWF also filed timely petitions for review. FERC argues that this court must dismiss these petitions because NWF and Yakima failed to intervene in the license proceeding prior to issuance of the license order. Neither NWF nor Yakima qualify, FERC states, as a "party to a proceeding under this chapter aggrieved by an order issued by the Commission," 16 U.S.C. § 825*l* (b), entitling them to seek review in this court.

We disagree. Under the regulations then in force, any "interested person" could appeal staff action. 18 C.F.R.

§ 7(d) (1981). Both Yakima and NWF appealed the Director's license order to the full Commission and there is no question they qualified as "interested parties."

FERC also argues that, in any event, Yakima's and NWF's appeals of the license order to the Commission were untimely. The license order was issued on May 13, 1981. Interested persons had thirty days in which to appeal to the FERC. *Id.* NMFS moved for an extension of time to appeal. The motion was granted, allowing filing an appeal to and including July 13, 1981. On June 22, Yakima asked permission to join in the extension of time. This motion was never expressly addresesd by FERC. Yakima then filed a timely joint appeal with NMFS. FERC considered the issues raised by Yakima in its order on appeal. Under these circumstances, we must conclude that Yakima qualifies as a party to the FERC proceeding and therefore is entitled to be before this court.

Although NWF's situation is more questionable, we need not decide whether its petition for review before this court in No. 82-7562 was timely since its motion to intervene in the appeal to this court was granted in No. 82-7561. NWF is an interested entity and pursuant to a prebriefing conference order it briefed one issue that had been properly raised before the Commission and that was before this court in Nos. 82-7561 and 7038. Neither the court nor the parties would be deprived of briefing on any of the substantive issues nor would any parties' rights be prejudiced were NWF's petition dismissed. Accordingly, we dismiss NWF's petition for review as moot.

III. FERC'S STATUTORY OBLIGATIONS ON RELICENSING

The issue in this case can be stated rather simply: Can the Commission satisfy its obligations under the relevant statutes by deferring consideration and imple-

mentation of fishery protection measures until after licensing? While we are sympathetic with FERC's stated practical desire to resolve the fishery questions in a comprehensive proceeding covering all five of the Mid-Columbia Dams, we hold that the statutes require FERC to examine fishery issues before issuance of a license.

No factual questions are involved in this case. Only questions of law are presented, which generally receive *de novo* review. However, an agency interpretation of the statute it administers is entitled to deference to the extent the interpretation is reasonable and comports with the intent of the statute. *Committee for an Independent P-I v. Hearst Corp.*, 704 F.2d 467, 473 (9th Cir.), *cert. denied*, —— U.S. —— (1983); *see City of Centralia, Washington v. FERC*, 661 F.2d 787, 790 & n.8 (9th Cir. 1981).

A. *Statutory Obligations to Consider Fishery Issues Prior to Licensing*

NMFS asserts, and FERC does not dispute, that under the Federal Power Act FERC must make the same inquiry into fishery issues in relicensing as required when initially licensing a project. Section 15(a) of the FPA, 16 U.S.C. § 808(a), governs license renewals and provides that "the [C]ommission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee" if the United States does not exercise its right to take over the project at the expiration of the original license. No federal take-over is involved in this action and no new entity is seeking the right to operate Rock Island.

Section 15 and the related federal take-over provision, section 14, 16 U.S.C. § 807, were amended in 1968. *See* Pub. L. No. 90-451 §§ 2, 3, 82 Stat. 617 (1968). The

house report on the amendments makes it plain that Congress intended the Commission to make the same inquiries on relicensing as on initial licensing:

> It provides that the Commission, no earlier than 5 years before the expiration of a license for a project subject to recapture, shall entertain applications for a new license. Just as in the case of original licensing the controlling criteria would be the comprehensive development standard of section 10(a) of the Federal Power Act. In view of this fact the relicensing proceeding would be deemed to involve "initial licensing" within the context of the Administrative Procedure Act rather than "license renewal."

H.R. Rep. No. 1643, 90th Cong., 2d Sess., *reprinted in* 1968 U.S. Code Cong. & Ad. News 3081, 3084. The proposed amendments were submitted to Congress by the Chairman of the Federal Power Commission, Lee C. White. His letter, incorporated into the house report, confirms and supports the report's interpretation of the Commission's duties on relicensing, and notes that in addition to power production, comprehensive development includes the consideration of fish and wildlife conservation, among other public uses. *Id.* at 3089.

In turn, section 10(a), 16 U.S.C. § 803(a), requires the Commission to consider all beneficial public uses when it grants a license. In pertinent part, this subsection conditions the grant of a license on the determination that the project

> will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, and for other beneficial public uses, including recreational purposes. . . .

In *Udall v. FPC*, the Supreme Court recognized that the examination of fish and wildlife resources is mandated

as part of the consideration of "recreational purposes." *See* 387 U.S. 428, 440 (1967). As stated by the Court:

> The test is whether the project will be in the public interest. And that determination can be made only after an exploration of all issues relevant to the "public interest," including . . . the preservation of anadromous fish for commercial and recreational purposes. . . .

Id. at 450; *see also California v. FPC*, 345 F.2d 917 (9th Cir.), *cert. denied*, 382 U.S. 941 (1965); *Scenic Hudson Preservation Conference v. FPC*, 354 F.2d 608 (2d Cir. 1965), *cert. denied*, 384 U.S. 941 (1966).

The law, then, is well defined: Prior to issuance of a new license, FERC must study the effect of a project on the fishery resource and consider possible mitigative measures. It is undisputed that in this proceeding the FERC did not undertake this obligation prior to issuing the license. Instead, it deferred full consideration of fish protection in two ways. First, it did not require Chelan to submit an "Exhibit S" (fish and wildlife report) as part of its application nor prior to issuance of the license, as required by FERC regulation. 18 C.F.R. § 4.41 (1981). This exhibit is the primary method used by the Commission to study the project's effect on wildlife (see Part B, *infra*). Second and most critically, it deferred study and resolution of fish protection issues to the Mid-Columbia Proceeding. FERC argues that deferring consideration of fishery issues is well within its discretion. The statute and the gloss put upon it by the courts warrant another conclusion. FERC must consider fishery issues *before*, not after, issuance of a license. *Udall*, 387 U.S. at 450; *see Scenic Hudson*, 354 F.2d at 620.

FERC cites *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543-544 (1978) as support for the proposition that an agency has discretion to modify its

procedures such as done in this case. The opinion in *Vermont Yankeee*, recognized, however, that such discretion may be circumscribed by statutory mandate. *Id.* at 549 n.21. As stated, the statute requires that public interest concerns be evaluated as a *condition* to licensing.

Cases discussing the environmental impact statement requirements of the National Environmental Policy Act, 42 U.S.C. § 4332, are instructive. In *Cady v. Morton*, 527 F.2d 786, 794 (9th Cir. 1975), the court stated that "the filing of an EIS should precede rather than follow federal agency action. . . ." (citations omitted). The rationale behind this rule is that inflexibility may occur if delay in preparing an EIS is allowed: "After major investment of both time and money, it is likely that more environmental harm will be tolerated." *Environmental Defense Fund v. Andrus*, 596 F.2d 848, 853 (9th Cir. 1979).

We see no reason why the law should be different under the Federal Power Act. The FPA imposes obligations similar to NEPA. In essence, the court reviews the license with particular concern to see that the Commission has fulfilled all its procedural obligations that must be undertaken prior to its issuance. In this case those procedural obligations include, among other things, prelicensing consideration of fishery issues. In *Scenic Hudson*, 354 F.2d 608, the Second Circuit was presented with an analogous situation involving the correct review of the Commission's decision to license a hydropower project. The court overturned the license on the basis the Commission failed to fully study alternatives to the proposed project and possible fish protection measures as part of its determination the license would be in the public interest. We agree with *Scenic Hudson*'s discussion of the court's reviewing function:

> This court cannot and should not attempt to substitute its judgment for that of the Commission. But we must decide whether the Commission has

> correctly discharged its duties, including the proper fulfillment of its planning function in deciding that the "licensing of the project would be in the overall public interest." The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts.

354 F.2d at 620 (citations omitted); *cf. California v. FPC*, 345 F.2d 917 (9th Cir. 1965) (license upheld where FPC gave fishery issues due consideration).

FERC argues that the procedure it is utilizing for Rock Island best comports with its statutory mandate to consider the "comprehensive" picture in its decision to license. *See* 16 U.S.C. § 803(a). Deferral to the Mid-Columbia Proceeding, FERC states, serves this goal because in it fish protection measures for five dams on the central Columbia River are being studied simultaneously. We agree it is important that fishery issues be addressed with a view to the total system: Storage and spill of one dam necessarily affects the operation of other dams. We do not agree, however, that this makes FERC's procedure in this case proper. First, as we have repeated, the statute and the cases construing it require prelicensing consideration of fishery issues. Second, Section 15(a) of the FPA, 16 U.S.C. § 808(a), expressly provides for the issuance of annual licenses to the prior licensee if the license expires pending the relicensing determination. *See Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. FPC*, 510 F.2d 198, 206-207 (D.C. Cir. 1975). In fact, FERC issued annual licenses to Chelan in 1980 and 1981. Clearly, it could have continued to do so if it wished to incorporate the results of the Mid-Columbia Proceeding in the new license. Through an annual license the status quo would have been maintained. *Id.* No harm would accrue to the licensee, as annual licenses must incorporate the terms of the prior license. 16 U.S.C. § 808(a).

We also find FERC's reliance on *California v. FPC*, 345 F.2d 917 (9th Cir. 1965), misplaced. That case does not stand for the proposition that FERC may defer fishery issues for later resolution. Unlike here, in *California* the Commission undertook extensive studies of the effect of the New Don Pedro Dam on the Tuolumne River fishery prior to issuance of the license. Specific fish protection measures were incorporated into the license. *Id.* at 921. The license also included a "reopener clause" which gave the Commission the right to modify those conditions in twenty years if further study warranted it. This court upheld the Commission's use of the reopener clause. *Id.* at 924-925. Simply because the new Rock Island license contains a similar clause, reserving FERC the right to incorporate the results of the Mid-Columbia Proceeding, does not mean *California* allows FERC to issue a license before consideration of fishery issues.

We also find unpersuasive FERC's argument that the procedure it used offers more protection for the fishery than simply issuing annual licenses. This argument is based on FERC's incorporation of the Mid-Columbia settlement agreement's minimum stream flow conditions into the new Rock Island license. The same protections could have been added to an annual license. An annual license must contain the same terms as the expired license, 16 U.S.C. § 808(a), but the Rock Island license, as amended in 1974, contained a "reasonable modifications" clause in Article 21. The Mid-Columbia Proceeding interim settlement agreement could have been incorporated through that clause.

While we see no substantial benefit from the procedure used by FERC, we do see a distinct possibility for harm resulting from utilization of a procedure designed to impose fish protection measures in a modification proceeding. First, a modification proceeding is not the same as a relicensing proceeding. Subject to the requirement that its decision be in the public interest, the Commission has

broad discretion to impose fish protection conditions when it issues a new license. Notwithstanding a reopener clause, FERC may not "amend" a license in a modification proceeding without the licensee's consent. 16 U.S.C. § 799. Plainly, therefore, the Commission's discretion is curtailed in a modification proceeding. Also, as a practical matter, the method used by FERC here removes the incentive for a speedy and efficient resolution of fishery issues. If these issues must be examined and resolved prior to licensing, the licensee has an incentive to submit all the required data as quickly as possible. The same incentive is not present in the procedure used here where fishery issues are deferred to the future. The licensee may very well attempt to forestall the imposition of protection measures because these might affect the project's power production. *See Environmental Defense Fund v. Andrus*, 596 F.2d at 853.

On the basis it violated the Federal Power Act, we reverse the order granting Chelan's license to operate Rock Island Dam and remand to the Commission. Our resolution of this case on the FPA question makes it unnecessary to discuss the Pacific Northwest Electric Power Planning & Conservation Act (PNPA) and the Fish and Wildlife Coordination Act (FWCA), in detail.

We note briefly that these acts place additional mandates on the Commission in a relicensing proceeding. The purpose of the FWCA is to ensure that "wildlife conservation shall receive *equal consideration* and be coordinated with other features of water resource development programs. . . ." 16 U.S.C. § 661 (emphasis added). "Equal consideration" is insured through the requirement that FERC and other agencies responsible for management of natural resources consult with federal and state wildlife agencies prior to authorizing a project. 16 U.S.C. § 662; *see Udall v. FPC*, 387 U.S. at 443-444. The PNPA is specifically directed to the Columbia River system and, unlike the FWCA, it imposes substantive as

well as procedural obligations on FERC. In pertinent part, it requires federal agencies responsible for managing hydropower projects on the Columbia system to

> exercise such responsibilities consistent with the purposes of this chapter and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides *equitable treatment* for such fish and wildlife with the other purposes for which such system and facilities are managed and operated.
> . . .

16 U.S.C. § 839b(h)(11)(A)(i) (emphasis added). One purpose of the PNPA is to place fish and wildlife concerns on an equal footing with power production. H.R. Rep. No. 976 (Part I), 96th Cong. 2d Sess. 49, *reprinted in* 1980 U.S. Code Cong. & Ad. News 5989. In this respect, the PNPA supplements the Federal Power Act. *Id.* at 57. We have no doubt that if FERC failed its Federal Power Act obligation to consider fishery issues prior to licensing, it concomitantly failed to meet its obligation to give fish "equal consideration" under the FWCA and "equitable treatment" under the PNPA.

B. *The Exhibit S and Consultation Requirements*

NMFS also argues that FERC violated its own regulations when it issued the license before Chelan had submitted "Exhibit S," a report on the projected effect of the dam on fish and wildlife resources. NMFS, as well as the other petitioners, makes a related claim that FERC violated its duty to consult with fishery agencies and Indian tribes prior to license issuance. We agree, notwithstanding FERC's assertion that it has the discretion to modify the filing requirements in its regulations.

At the time of Chelan's application for a new license, 1977, FERC regulations provided that "there shall be

filed as part of an application for license the following exhibits." What follows is a list, including Exhibit S, which is

> a report on the effect, if any, of the project upon the fish and wildlife resources in the project area or in other areas affected by the project and proposals for measures considered necessary to conserve and, if practicable, to enhance fish and wildlife resources affected by the project. The exhibit shall include functional design drawings of any fish ladders proposed to be constructed in compliance with section 18 of the Federal Power Act, such other facilities or developments as may be necessary for the protection, conservation, improvement and mitigation of losses of fish and wildlife resources in accordance with section 10(a) of the Act, and cost estimates for such facilities and developments. The Applicant shall prepare this exhibit on the basis of studies made after consultation and in cooperation with the U.S. Fish and Wildlife Service, Department of the Interior, and appropriate state fish and wildlife agencies and in the case of public lands, advise Federal agencies having jurisdictional responsibilities therefor of its proposed plans. The exhibit shall include a statement on the nature and extent of Applicant's consultation and cooperation with the above agencies. To the extent those aspects of fish and wildlife related to recreation are covered in Exhibit R, a specific reference to Exhibit R will suffice.

18 C.F.R. § 4.41 (1976).

It is a well-known maxim that agencies must comply with their own regulations. *E.g., Memorial, Inc. v. Harris*, 655 F.2d 905, 910-911 n.14 (9th Cir. 1980). We do not agree with FERC's claim that Exhibit S is the type of filing requirement that an "agency may relax, modify or waive . . . ." *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 242 (D.C. Cir.), *cert. denied*,

449 U.S. 1061 (1980) (citations omitted). Exhibit S is plainly designed to facilitate FERC's *duty* to consider fishery issues prior to licensing. This is not the same as the situation in *Papago*, which involved the reviewability of an order rejecting a motion to overturn a rate filing for patent defects. The *Papago* court found the order nonreviewable because it involved a requirement that was an aid to the Commission's exercise of its discretion over the decision to accept a rate filing. Exhibit S, however, is tied to FERC's obligation to investigate fishery matters prior to licensing. Also, this is not a situation where the parties are contesting the adequacy of the report—none was filed. No alternative method of consideration of fishery information was utilized.

The Exhibit S report is directly related to FERC's duty of consultation. The FWCA and the PNPA each require FERC to consult with fishery agencies and, in the case of the PNPA, Indian tribes prior to licensing. 16 U.S.C. § 662(a) (FWCA); 16 U.S.C. § 839b(h)(11)(B) (PNPA). Exhibit S aids that obligation because it is to be prepared by the applicant "on the basis of studies made after consultation and in cooperation with the U.S. Fish and Wildlife Service, Department of the Interior, and appropriate state fish and wildlife agencies." 18 C.F.R. § 4.41 (1981). The report must also include statements on the nature and extent of the cooperation and consultation between the applicant and the agencies. *Id.*

It is not enough the FERC gave notice of Chelan's application to the agencies and Indian tribes. The consultation obligation is an affirmative duty. Also, it is safe to say that the respective fishery agencies believed the consultation process would take place in the preparation of Exhibit S. Instead, however, FERC issued the license before the exhibit was submitted.

The Commission argues that it was proper for it to defer the Exhibit S report pending the completion of

additional studies. Additional studies are necessary, FERC states, because the full impact of the modifications authorized at Rock Island in 1974 have not yet been sufficiently analyzed. That may well be true. But to the extent those studies are necessary, FERC did not have to issue the permanent license when annual licenses could have been used pending their completion.

The Exhibit S and consultation requirements are the primary means by which FERC is to comply with its duty to examine fishery issues prior to licensing. FERC's failure to follow those requirements further supports reversing the license order and remanding to the Commission.

C. *Environmental Impact Statement*

NMFS also argues that FERC was required to prepare an environmental impact statement (EIS) prior to relicensing Rock Island Dam. We agree.

Having been built in the 1930's, Rock Island predated the National Environmental Protection Act (NEPA) and its requirements for preparation of impact statements for "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(c). An EIS was, however, prepared in 1974 when the modifications to the dam were proposed. The question before us is whether an EIS is required prior to the decision to relicense the project. Surprisingly, we have found no cases which have addressed this issue in the context of relicensing hydropower projects by FERC.

"[A]n agency's determination that a particular project does not require the preparation of an EIS is to be upheld unless unreasonable." *Foundation for North American Wild Sheep v. Department of Agriculture*, 681 F.2d 1172, 1177 (9th Cir. 1982) (footnote omitted) (citing *Portela v. Pierce*, 650 F.2d 210, 213 (9th Cir. 1981); *City & County of San Francisco v. United States*, 615

F.2d 498, 500 (9th Cir. 1980); *City of Davis v. Coleman*, 521 F.2d 661, 673 (9th Cir. 1975)). We may conclude the agency acted unreasonably if substantial questions are raised concerning whether the project may significantly affect the quality of the human environment. *Id.* at 1178.

There is no doubt that if this action involved the decision to license new construction of a hydropower project such as Rock Island, an EIS would be required. *See Green County Planning Board v. FPC*, 455 F.2d 412 (2d Cir.), *cert. denied*, 409 U.S. 849 (1972). FERC argues that this situation is different because the dam has been in operation for fifty years. FERC relies on cases which hold that when there will be no change in the status quo, such that the action is simply "a phase in an essentially continuous activity," no EIS is necessary. *City & County of San Francisco*, 615 F.2d at 501; *see Burbank Anti-Noise Group v. Goldschmidt*, 623 F.2d 115, 116-117 (9th Cir. 1980); *cert. denied*, 450 U.S. 965 (1981); *Committee for Auto Responsibility v. Solomon*, 603 F.2d 992, 1003 (D.C. Cir. 1979); *cert. denied*, 445 U.S. 915 (1980); *Westside Property Owners v. Schlesinger*, 597 F.2d 1214, 1217-1218 (9th Cir. 1979). Rock Island was relicensed under the same terms as the prior license and therefore FERC argues that there has been no change in the status quo. Viewed narrowly, relicensing fits within the FERC's characterization and comports with the cases cited above: *Burbank Anti-Noise Group* (no EIS is required when federal government aided the purchase of an existing airport by private group); *City & County of San Francisco* (no EIS required when Navy leased, with essentially the same terms as the prior lease, an existing shipyard to a private firm); *Committee for Auto Responsibility* (lease of existing parking lot to private firm did not change the status quo); *Westside Property Owners* (formalization after enactment of NEPA of long-existing agreement and program between

Germany and United States to train German pilots did not require EIS).

NMFS characterizes relicensing as much more than a phase in continuous activity. Because of the procedures required on the decision to relicense, the purposes of relicensing, and the irreversible commitment of a water resource if relicensing is upheld, we agree.

A primary relicensing consideration for FERC is whether it should recommend to Congress recapture (or takeover) by the United States. 16 U.S.C. § 807. No one argues that the United States should take over Rock Island, but the need for this inquiry is a strong indication that FERC should have at its disposal all pertinent information, including that provided in an EIS.

If the United States does not exercise its right of takeover, the "[C]ommission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under then existing laws and regulations." 16 U.S.C. § 808(a). As discussed earlier, the decision to relicense is to be based on the same inquiry as original licensing, including a consideration of all relevant harms and benefits to public uses related to the project. The Commission must determine whether any changes in operations are required by "then existing" law and has full authority to impose such changes.

The Commission must also determine whether a non-power license should be issued. 16 U.S.C. § 808(b). Non-power licenses may be issued at the motion of an interested party or on the Commission's own motion. Seemingly, the Commission would determine that a non-power license is necessary if it concluded that power production needs were outweighed by recreation or environmental considerations.

Both the consideration of what conditions to attach to a new license and the questions involved in determining

whether a non-power license is necessary necessitate the information prepared in an environmental impact statement.

The purposes of the procedure imposed by Congress on relicensing underscore the necessity for an EIS. As the Commission stated when it proposed the amendments to the relicensing procedures in 1968:

> The Congress limited the maximum term of any license issued by the Federal Power Commission to 50 years and thereby preserved for the Nation, acting through subsequent Congresses, a full opportunity to reevaluate the best use of each project upon expiration of the license. We now recommend that Congress fix appropriate procedures for the reevaluation of each project in light of contemporary and prospective public needs.

Letter from Lee C. White, *supra*, at 3086. Thus, the Federal Power Act contemplates much more than a mere continuation of the status quo when the decision is made to relicense. Relicensing is substantially equivalent to issuing an original license and one would assume that the FERC regulations governing the preparation of an EIS generally apply. *See* 18 C.F.R. §§ 2.80, 2.81 (1981).

Relicensing, then, is more akin to an irreversible and irretrievable commitment of a public resource than a mere continuation of the status quo. *See Environmental Defense Fund v. Andrus*, 596 F.2d 848, 852 (9th Cir. 1979); *Port of Astoria v. Hodel*, 595 F.2d 467, 477-478 (9th Cir. 1979). Simply because the same resource had been committed in the past does not make relicensing a phase in a continuous activity. Relicensing involves a new commitment of the resource, which in this case lasts for a forty-year period. *See Hodel*, 595 F.2d at 477.

Nevertheless, FERC argues that it has not violated NEPA because the only environmental fact in question

is fish protection and that question is being addressed in the Mid-Columbia Proceeding. As noted above, however, an EIS must be prepared before a project is approved, and the Mid-Columbia Proceeding does not satisfy that obligation. *See Environmental Defense Fund v. Andrus*, 596 F.2d at 853; *Cady v. Morton*, 527 F.2d at 794 & n.4.

In sum, we conclude that the FERC acted unreasonably when it issued the license to Chelan without first preparing an EIS.

IV. INDIAN FISHING RIGHTS

Yakima contends that the licensing violated its treaty fishing rights. Yakima states further that a resolution of the statutory issues may make it unnecessary to reach this issue. We accept Yakima's offer to defer consideration of this question until there is a subsequent appeal, if any, after our remand to FERC. We believe it proper for FERC to be first to address Yakima's claims after development of a full record. *See FPC v. Transcontinental Gas Pipe Line Corp.*, 423 U.S. 326, 332-333 (1976).

V. CONCLUSION

The Commission failed to meet its statutory obligation to consider fishery issues prior to licensing. It also unreasonably failed to prepare an EIS prior to licensing. Accordingly, the

PETITION FOR REVIEW IS GRANTED and the ORDER IS SET ASIDE.

B. FERC Orders Below

14 FERC ¶ 62,187

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 943

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY

ORDER ISSUING NEW LICENSE (MAJOR)

(Issued May 13, 1981)

Public Utility District No. 1 of Chelan County (Chelan) filed an application for a license under Part I of the Federal Power Act (Act) for the continued operation and maintenance of the Rock Island Project No. 943.[1] The project is located on the Columbia River, a navigable waterway of the United States, in Chelan and Douglas Counties, Washington, and occupies lands of the United States.

Notice of the application has been published and comments have been received from interested Federal, State, and local agencies. The Washington Department of Fisheries, the Washington Department of Game, and the National Marine Fisheries Service were granted intervention. The significant concerns of the intervenors and commenting agencies are discussed below.

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[1] Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation under 18 C.F.R. § 375.308 (1980), *as amended by* 46 Fed. Reg. 14119 (1981).

Project Description and History

The Federal Power Commission issued a license on January 21, 1930, to the Washington Electric Company for the construction and operation of the Rock Island Project No. 943. On June 30, 1931, the license was transferred to the Puget Sound Power and Light Company (Puget), and on July 31, 1952, the license was amended to include the Public Utility District No. 1 of Chelan County (Chelan) as a joint Licensee for the Rock Island Project. Puget was eliminated as a joint licensee by order issued July 17, 1980. In 1953, the project installed capacity was increased to a total of 212.1 MW, and in 1974, the authorized project installed capacity was increased to a total of 622.5 MW.

The constructed Rock Island Project consists of: 1) a 135-foot high and 2,524-foot long concrete gravity dam; 2) an 1,800-acre and 20-mile long reservoir, providing 130,000 acre-feet of gross storage; 3) the left bank powerhouse having a total installed capacity of 212.1 MW; 4) the right bank powerhouse having a total installed capacity of 410.4 MW; 5) six 115-kV transmission lines; and (6) appurtenant facilities. A more detailed project description is contained in ordering paragraph (B).

Safety and Adequacy

The project structures are safe against sliding and overturning under normal conditions of maximum headwater elevation 614.1 feet, normal tailwater elevation 571.6 feet (U.S.G.S. datum) plus earthquake loading of 0.1 g, and under flood conditions with headwater elevation of 619.5 feet and tailwater elevation of 606.2 feet. The San Francisco Regional Office reported that the project structures were in good condition and were generally well maintained. The most recent Part 12 Inspection Report also concluded that the project works were safe and adequate and made no recommendation with regard to safety of the project.

The spillway design flood is 960,000 cfs and the Probable Maximum Flood (PMF) at Rock Island is estimated to be 1,425,000 cfs. At the PMF, the Rock Island Reservoir would surcharge to about elevation 632 feet and the tailwater would be at elevation 623 feet. The differential between headwater and tailwater would be about 13.5 feet when discharging the spillway design flood of 960,000 cfs and about 9.0 feet when discharging the PMF of 1,425,000 cfs. In view of the comparatively small head differential and the insignificant amount of storage that would be released, there would be slight additional hazard to downstream areas in the event of failure of the dam during the occurrence of the PMF. The spillway is adequate.

The Board of Consultants, formed to monitor the construction of the second Rock Island powerhouse, met from May 13 to 15, 1980, for the final review of the engineering and construction of the project. In the final report, the Board recommended that the Licensee continue the structural monitoring plan, which provides for monitoring of dam alignment and settlement, uplift, relief drains both for flows and pressures, post-tensioned anchors, and for regular inspection of the "loose bolting" attachment of the trash racks. Article 41 requires the Licensee to continue the structural monitoring plan.

It is concluded that the project, under the conditions of this license, is safe and adequate.

Fish and Wildlife Resources

Anadromous fish migrating past the dam include chinook, coho, and sockeye salmon, steelhead trout, and Pacific lamprey. Fishways allow for the upstream migration of anadromous salmonids to their spawning areas in the upper reaches of the Columbia River and its tributaries.

The State of Washington Department of Fisheries (Fisheries), the State of Washington Department of Game

(Game), and the National Marine Fisheries Service (NMFS) are concerned with the effect of the project on the downstream migration of juvenile anadromous salmonids, on the upstream migration of anadromous fish, and on the limited fish spawning habitat within the project boundary. These agencies contend that reduced flows and insufficient spills from the project adversely affect juvenile salmonids by delaying the seaward migration through the reservoir, increasing predation, and increasing turbine mortality. Anadromous salmonids must also pass the project to reach upstream spawning and rearing areas. In addition, Fisheries and Game are concerned about the reduction in harvest of anadromous and resident fish species and the effects of the project on water quality.[2] Fisheries, Game, NMFS, and the U.S. Department of the Interior believe that mitigative measures to lessen the impacts of the project on anadromous salmonids and resident fish populations should be incorporated into any new license issued, and should include, among other things, land acquisition and habitat management for the benefit of wildlife species and the improvement of fishing opportunities at the project.

Hearings and settlement conferences in Docket No. E-9569 on the issues of minimum flows and of spills from the project necessary to protect juvenile anadromus fish resulted in the filing of a settlement agreement on December 31, 1979, which was approved by the Commission in March 1980. Pursuant to this agreement, Chelan, along with Douglas County PUD and Grant County PUD, is conducting studies to investigate the effect of the project on the downstream migration of juvenile salmonids, the methods of improving protection and natural production of salmonids, and the methods of improving and increasing semi-natural and artificial production of

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[2] The Washington Department of Ecology has issued a water quality certificate for the project, in accordance with Section 401 of the Federal Water Pollution Control Act.

salmonids from the Mid-Columbia River. Final reports will be submitted to FERC and applicable agencies for review.

Article 48 of the prior license required Chelan to conduct extensive pre- and post-flooding studies to determine the effects of the operation of the second powerhouse and of raising the reservoir level, on Columbia and Wenatchee River fish and wildlife. Studies will also determine the effectiveness of the fish passage facilities, the flow requirements for anadromous fish, and the extent of turbine mortality. Recreational fishing will be surveyed and water quality will be monitored. Seasonal wildlife use of project lands, the amount of wildlife-oriented recreation, and economic and social benefits derived from the consumptive and non-consumptive use of wildlife will also be assessed. A final report will compare pre-flooding and post-flooding conditions for fish and wildlife resources and recreational resource use, and will recommend any mitigative measures determined to be necessary.

The settlement agreement and the ongoing fish and wildlife studies adequately address the concerns of the intervenors and commenting agencies regarding the effects of the project on fish and wildlife resources. Article 38 requires the Licensee to file a revised Exhibit S within 3 years, taking into consideration the results of the pre- and post-flooding studies. Included in the revised Exhibit S would be any proposals for mitigative measures necessary to protect or enhance the fish and wildlife resources affected by the project.

Under Articles 12 and 15 of this license, the Commission reserves the right to prescribe minimum flow releases and other changes in project operation to preserve and enhance fish and wildlife resources.

Issuance of this license does not affect the ongoing consolidated proceeding identified as lead Docket No. E-9569.

Recreation

The primary recreational uses of the project reservoir are limited fishing, small boating, and water skiing. Existing recreational facilities include a controlled fishing pond, two boat launching ramps, and a small day-use park with a skating rink. In addition, a nine-hole golf course operated by the Town of Rock Island exists on lands owned by Chelan within the project boundary.

Chelan filed on September 29, 1975, and revised on March 1, 1978, an Exhibit R for the Rock Island Project pursuant to Article 55 of the prior License. The Exhibit R was approved by the Commission on October 19, 1979, requiring initial recreational development of six sites, and reserving two additional sites for future development. Proposed recreational development to be completed by 1984 includes: 30 campsites, 1 group camp, 165 picnic sites, 4 boat docks, 3 boat ramps, 2 interpretative centers, 1 swimming area, and 65 miles of shoreline trails.

The order approving the Exhibit R required Licensee to file for Commission approval, a plan for recreational development of the Wenatchee River Confluence North of Walla Walla Point sites. An amendment to the Exhibit R proposing development of the two sites was filed on October 20, 1980, and was approved on January 5, 1981.

The approved Exhibit R and amendment adequately fulfill current and foreseeable recreational needs at the project. This order makes the approved Exhibit R a part of the new License for Project No. 943. Article 17 of the License reserves sufficient authority for modification of the plan, including acquisition of lands to meet future recreational needs in light of changing conditions.

Cultural Resources

The Rock Island Railroad Bridge, Wenatchee Flat Site, and Pangborn-Herndon Memorial, all within the project

boundary, are listed on the National Register of Historic Places. The Rock Island Dam and Sternwheeler Park are listed on the State Register of Historic Places, and are within the project boundary. In addition, 26 archeological sites have been identified by the Washington State Historic Preservation Officer (SHPO) as being within the project boundary.

The SHPO recommends that Chelan develop a mitigation plan that addresses potential effects of the project on cultural resources. Article 52 of the prior license required the Applicant to do an archeological survey of the project area and perform any salvage work necessary to preserve the archeological values affected by construction of the second powerhouse and raising the reservoir level. Licensee's studies have been completed, but final reports have not been prepared. The final report will contain recommendations regarding further protection of archeological resources of the project area and will be submitted to the SHPO and the Commission for review. Article 39 requires the Licensee to continue to cooperate with the SHPO and Washington State University in order to ensure completion of any archeological work currently under way at the project and to ensure protection of the project's archeological resources, presently, and in the event of any future development at the project.

Other Environmental Considerations

On the basis of an environmental assessment, the Commission's staff found that licensing of the project would not be a major Federal action significantly affecting the quality of the human environment.

Issuance of this license will permit continued project operation, which began over 50 years ago. No new construction, except for recreation development, or change in project operation is proposed. The impacts of continued operation are discussed earlier in this order. Planned recreational facilities would be beneficial and their con-

struction would have impacts that are only minor and short-lived. On the basis of the record, including agency and intervenor comments and staff's independent analysis, it is found that issuance of a license for this project, as conditioned, is not a major Federal action significantly affecting the quality of the human environment.

Other Aspects of Comprehensive Development

The project, with a total installed capacity of 622.5 MW, has a hydraulic capacity of 220,000 cfs, which is the hydraulic capacity of the Rocky Reach plant located immediately upstream on the Columbia River. The project storage capacity is very limited, and therefore, power generation is dependent to a great extent on discharges from upstream powerplants.

Applicant has no plans for future expansion of the project, and development of the project for additional power is not economically justified at this time since the project is currently using the total flow discharged from upstream projects.[3]

The Columbia River is a navigable river. At the present time, there is no commercial navigation and no navigational facilities in the vicinity of this reach of the Columbia River. However, an investigation was conducted by the Seattle District, Corps of Engineers, and the results demonstrated that the potential installation of navigation locks is compatible with the Rock Island Project.

There are irrigation facilities utilizing waters from the Rock Island reservoir. The operation of the project has no adverse effect on these installations.

Continued operation of the Rock Island Project No. 943 is consistent with the comprehensive development of the

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[3] The project with its average annual generation of 2,780 million kWh, will utilize a renewable resource that will save the equivalent of approximately 4,565,000 barrels of oil or 1,287,000 tons of coal per year.

Columbia River. It is concluded that the project effectively utilizes the available head and flow of the Columbia River. Subject to the conditions of this license, Project No. 943 is best adapted to a comprehensive plan for development of the Columbia River basin for beneficial public uses, and issuance of this license is in the public interest.

License Term

Since there has been recent major construction at the project, which significantly increased the capacity, the license term will be 40 years from the end of the prior license.[4] Accordingly, this license will expire on January 31, 2020.

Revised Exhibits

Chelan filed on October 18, 1976, revised Exhibits J and K pursuant to Article 68 of Amendment 17 to the license to show the project boundary around the second powerhouse. Also, the Commission issued on October 19, 1979, an order approving Exhibit R, and issued on July 17, 1980, an order amending license for the Rock Island Project. Article 43 requires the Licensee to file revised Exhibits J and K, to supersede the Exhibits J and K filed October 18, 1976, and to reflect any changes in the project as a result of the orders issued October 19, 1979, and July 17, 1980.

It is ordered that:

(A) This license is issued to Public Utility District No. 1 of Chelan County, Washington (Licensee), of Chelan County, Washington, under Part I of the Federal Power Act (Act), for a period effective the first day of the month in which this license is issued and terminating January 31, 2020, for the continued operation and maintenance of the Rock Island Project No. 943, located in

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[4] *See* the Montana Power Company, Mystic Lake Project No. 2301, Order Issuing New License (Major) (Issued October 5, 1976).

Chelan and Douglas Counties, Washington, on the Columbia River, a navigable waterway of the United States, and occupying lands of the United States under the administration of the U.S. Bureau of Land Management. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The Rock Island Project No. 943 consists of:

(1) All lands, to the extent of the Licensee's interests in those lands, constituting the project area and enclosed by the project boundary. The project area and boundary are shown and described by certain exhibits that form part of the application for license and that are designated and described as:

Exhibit	FERC No. 943-	Showing
J	225	General Map-Project Area
K-1 to K-25	132 through 156	Detail Map-Project Area
K-S1 to K-S9	157 through 165	Survey Data-Project Area
K-T1	226	Detail Map-Transmission Line

(2) Project works consisting of:

(a) a concrete gravity dam, about 3,580 feet long, with a gated spillway section 1,184 feet long containing 31 crest gates; (b) a reservoir extending about 20 miles upstream having a normal maximum forebay elevation 614.1 feet U.S.G.S. and a gross storage capacity of 130,000 acre-feet and a usable storage capacity of 11,000 acre-feet at a maximum reservoir drawdown of 4 feet for power operations; (c) a concrete powerhouse about 870 feet long, integral with the dam, containing one 15,000-kW generating unit, three 20,700-kW generating units, and six 22,500-kW generating units (10 units totaling 212.1 MW); (d) a step-up substation on the powerhouse roof; (e) a high-tension switching station on Rock Island; (f) four single-circuit 115-kV transmission lines extending from the switching station for a distance of about two miles to the McKenzie switchyard; (g) a sec-

ond project powerhouse at the right bank about 465 feet long and 200 feet wide, containing eight 51.3-MW horizontal shaft, bulb-turbine type generator units (8 units totaling 410.4 MW); (h) step-up transformers at the second powerhouse connected to two single-circuit 115-kV transmission lines extending about two miles to the McKenzie-Valhalla substantion; (i) three fishways and related fish facilities; and (j) appurtenant facilities.

The location, nature and character of these project works are generally shown and described by the exhibits cited above and more specifically shown and described by certain other exhibits that also form a part of the application for license and that are described and designated as:

Exhibit L	FERC No. 943-	Titled
1	185	General Plan
2	186	Left Abutment Plan
3	187	First Powerhouse Plan
4	188	First Powerhouse Sections
5	189	First Powerhouse Main One Line Diagram
6	190	Spillway Dam
7	191	Second Powerhouse Plan
8	192	Second Powerhouse Section
9	193	Second Powerhouse Main One Line Diagram
10	194	Right Abutment Plan
11	195	Left Bank Fishway Sheet 1 of 2
12	196	Left Bank Fishway Sheet 2 of 2
13	197	Middle Fishway Sheet 1 of 2
14	198	Middle Fishway Sheet 2 of 2
15	199	Right Bank Fishway Sheet 1 of 4
16	200	Right Bank Fishway Sheet 2 of 4
17	201	Right Bank Fishway Sheet 3 of 4
18	202	Right Bank Fishway Sheet 4 of 4

Exhibit M—"General Description of Equipment" consisting of eleven typed pages filed on May 29, 1980, as part of the Application for New License.

Exhibit R—"Recreation Plan for Rock Island Project" consisting of 35 pages of text and 7 drawings (FERC Nos. 943-216 and -217, and -219 through -223) filed March 1, 1978, and approved October 19, 1979.

(3) All of the structures, fixtures, equipment, or facilities used or useful in the operation or maintenance of the project and located within the project boundary, all portable property that may be employed in connection with the project, located within or outside the project boundary, as approved by the Commission, and all riparian or other rights that are necessary or approrpriate in the operation or maintenance of the project.

(C) Exhibits J, L, M, and R designated in ordering paragraph (B) above are approved and made a part of the license. Exhibit K is approved to the extent that it shows the general location and nature of the project.

(D) The application for approval of Exhibits J and K filed on October 18, 1976, is dismissed.

(E) This license is also subject to the terms and conditions set forth in Form L-5 (revised October, 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," attached to and made a part of this license. The license is also subject to the following additional articles:

Article 38. The Licensee shall, within three years from the date of issuance of this license, file for Commission approval, a revised Exhibit S including "as-constructed" fishway drawings, prepared in accordance with the Commission's Rules and Regulations, and including among other things, the results of the pre- and post-flooding studies, and any proposals for mitigative measures needed

to protect and enhance the fish and wildlife resources affected by project operation.

Article 39. The Licensee shall continue to cooperate with the Washington State Historic Preservation Officer (SHPO) and with Washington State University to ensure completion of any archeological work currently underway at the project, and as required by the prior license. Prior to the commencement of any construction or development of any project works or other facilities at the project, the Licensee shall consult and cooperate with the SHPO to determine the need for, and extent of, any archeological or historic resource surveys and any mitigative measures that may be necessary. The Licensee shall provide funds in a reasonable amount for such activity. If any previously unrecorded archeological or historic sites are discovered during the course of construction, construction activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological or historic resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on archeological or historic work related to the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 40. The Licensee shall consult and cooperate with the Washington Department of Social and Health Services, and the Douglas County Planning Commission to determine what, if any, vector control measures are needed at the project.

Article 41. The Licensee shall carry out the recommendations for testing and monitoring of the project structures and equipment as set forth in the final report by the Board of Consultants dated May 15, 1980.

Article 42. The Licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 830,000 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands other than for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The acreage of those lands is tentatively set at 33.53 acres. The Commission reserves the right to adjust this figure at a later date.

(c) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 0.07 acre of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 43. Within one year from the date of issuance of this order, the Licensee shall file for approval, revised Exhibits J and K conforming to § 4.41 of the Commission's regulations, showing the Rock Island Project No. 943 as constructed.

Article 44. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of

use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State

Article 42. The Licensee shall pay the United States the following annual charges, effective the first day of the month in which this license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 830,000 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands other than for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The acreage of those lands is tentatively set at 33.53 acres. The Commission reserves the right to adjust this figure at a later date.

(c) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 0.07 acre of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

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use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State

and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modifications of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands sub-

ject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires

Project No. 943

IN TESTIMONY of its acknowledgment of acceptance of all of the terms and conditions of this Order, Public Utility District No. 1 of Chelan County, Washington this ——— day of ————, 1981, has caused its corporate name to be signed hereto by ————, its President, and its corporate seal to be affixed hereto and attested by ————, its Secretary, pursuant to a resolution of its Board of Directors duly adopted on the ——— day of ————, 19—, a certified copy of the record of which is attached hereto.

By ————
President

Attest:

————
Secretary

(Executed in quadruplicate)

Form L-5
(Revised October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED MAJOR PROJECT AFFECTING NAVIGABLE WATERS AND LANDS OF THE UNITED STATES

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: *Provided, however,* That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval a revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration,

addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and any such alterations thereto, and shall notify him of the date upon which work with respect to any alteration will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof

has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is

transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of the said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: *Provided*, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commis-

sion reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for

such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United States, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity

for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of

the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: *Provided*, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the author-

ized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said

facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: *Provided,* That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 27. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation,

or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 32. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 33. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 34. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, *et seq.*), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: *Provided*, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: *Provided further*, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 35. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 36. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 37. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

19 FERC ¶ 61,223

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler, III, Chairman;
Georgiana Sheldon,
J. David Hughes
and A.G. Sousa.

Project No. 943-011

PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON

ORDER ON APPEAL

(Issued June 4, 1982)

On May 13, 1981, the Director of the Office of Electric Power Regulation ("Director") issued a new license to Public Utility District No. 1 of Chelan County, Washington ("Licensee") for the continued operation and maintenance of the Rock Island Project No. 943 located on the Columbia River in Chelan and Douglas Counties, Washington. (15 FERC ¶ 62,187). An appeal[1] of the Director's order was filed jointly by the National Marine

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[1] The National Wildlife Federation filed an untimely appeal and is therefore rejected. [18 CFR § 1.7(d) (1981).] The subsequent request for joinder and response to the Licensee's answer are also rejected.

Fisheries Service and the Yakima Indian Nation.[2, 3] The appeal addresses primarily question of the treatment of the fisheries resource and the lack of an environmental impact statement. The Licensee filed a response to the petition for appeal.

Motion to Strike

The Fisheries Service filed an answer to the Licensee's response to the petition. In response, the Licensee filed a motion to strike the answers. The Licensee argues that responses to answers are not permitted and that the pertinent issues had been presented in the earlier filings. The Fisheries Service argues in their response to the motion that although a response to an answer is not provided for in the regulations, it should not automatically be rejected. The Fisheries Service states that its filing completes the record.

There is no provision in our regulations for filing responses, or objections proffered in responses to a previously filed answer, response or objection. Except the extent that such a pleading represents a new prayer for relief or an initial response thereto, it will not be considered.[3] The answer filed by the Fisheries Service merely expand on or respond to arguments previously

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[2] The participants in the joint appeal will be referred to as "Fisheries Service". When an argument is made solely by the Yakima Indian Nation, it will be identified as such.

[3] The Washington Department of Fisheries and Game and the Oregon Department of Fish and Wildlife also requested that they be allowed to join in the joint appeal. Inasmuch as this request to join additional parties to the appeal was filed after the deadline for filing appeals, the request was untimely and is therefore denied. *See* 18 FERC § 1.7(d) (1981). We do note that denial of this the request does not alter the substance of the appeal that was timely filed.

[3] *Union Electric Company*, 18 FERC ¶ 61,156 (1982); *Southern California Edison Co., et al.*, 15 FERC ¶ 61,099 (1981).

presented. We are, therefore, granting the Licensee's motion to strike the response filed by the Fisheries Service to the Licensee's answer.

Fisheries Resource

The Fisheries Service states that the Director's order fails to adequately address its concerns with respect to the project's impacts on the anadromous fisheries resource. The Fisheries Service argues that the separate proceeding[4] is not sufficient to develop solutions to the problems. The Fisheries Service requests that a schedule be established for the installation of downstream bypass systems; that the minimum flows set forth in the settlement agreement be included in the license with reopener provisions; that provide [sic] compensation be provided for fisheries losses where such losses cannot be mitigated.

The Licensee states that the fisheries problems are being fully investigated in the separate proceeding and argues that severance of the fisheries question is an appropriate procedure. The Licensee questions the Fisheries Service approach of requesting separate consideration of the Rock Island Project when a system-wide approach would be more comprehensive.

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[4] We established a separate proceeding which consolidated for hearing and resolution the question of the effect of the operation of Project Nos. 2114, 943, 2145, and 2149 on the fisheries resource in the Columbia River. Public Utility District No. 2 of Grant County, Washington, *et al.*, Project No. 2114, *et al.*, "Order Consolidating Proceeding Establishing Hearing and Requiring Prehearing Conference (issued March 7, 1979). The interim results of that proceeding have been two settlement agreements: one for a period of four years concerning the study of flows to protect the Vernita Bar spawning area (approved October 15, 1979); and another for a period of five years to study the impacts of the projects on the downstream migrating fish and to develop solutions, if any, to lessen the impacts (approved March 20, 1980). The 1980 settlement agreement is the agreement referred to in this order.

The Director's order is correct in its statement that separate proceeding is addressing the concerns of Fisheries Service. The piecemeal approach advocated by the Fisheries Service would be costly and probably would not obtain adequate results. The problems demand a system-wide approach. That is why we ordered the separate proceeding. The question of by-pass systems at any of the dams is one to be addressed under the settlement agreement and, therefore, is currently pending before the presiding administrative law judge. The question of compensation for unmitigated losses is also pending before the presiding judge. The settlement agreement provides for interim minimum flows which the Licensee is bound to provide. Articles 12 and 15 of the license issued by the Director allow the Commission to impose minimum flows for the benefit of the fisheries resource and to change those flows should the need arise. Therefore, we believe that the inclusion of a license article on the interim minimum flow is not necessary. As we stated recently:

> . . . the participants should keep in mind that the Commission's order of March 7, 1979, explicitly charges the presiding judge with the responsibility, and delegates to him the authority, with respect to studies and interim operating measures during the period prior to final Commission action in the proceeding initiated by that order.

Public Utility District No. 2 of Grant County, Washington et al., 18 FERC ¶ 61,023 (1982). The new license contains adequate provisions to implement any changes in project operation or structures that we deem necessary for the protection and enhancement of the fisheries resources when an adequate record has been certified to the Commission. We believe that the Director appropriately issued the new license for Project No. 943.[5]

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[5] The Fisheries Service also requests that a hearing be held to develop license conditions. We have already established a hearing

Exhibit S

The Fisheries Service argues that the new license should be "withdrawn" pending the completion of the Exhibit S (fish and wildlife report). Under Article 48 of the original license, the Licensee was ordered to file a revised Exhibit S "within three years after initial operation of the second powerhouse."[6] The final unit of the second powerhouse was placed into operation in August 1979. Thus, under Article 48, the revised Exhibit S would be filed in August 1982. Article 38 of the new license orders the Licensee to file a revised Exhibit S "within three years from the date of issuance of this license" which would be May 12, 1984.

We can find no reason to "withdraw" the license pending the filing of a revised Exhibit S. The options available to the Commission in addressing the fisheries problems are not reduced by requiring a revised exhibit to be filed after the issuance of the license. We are amending Article 38 of the license, however, to reflect the original timetable for the filing of the revised Exhibit S.

Need for Environmental Impact Statement

The Fisheries Service argues that the issuance of the new license for Project No. 943 is a major federal action significantly affecting the quality of the human environment and that therefore, staff was required to prepare an environmental impact statement ("EIS"). The Licensee states that no EIS is required because there is no proposal to change the status quo at the project.

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on the fisheries issue. That hearing is the appropriate forum for the development of any further license conditions that may be appropriate for the protection and enhancement of the fisheries resource.

[6] In 1974 the Commission authorized the construction of a second powerhouse at Rock Island Dam. The Commission added Article 48 to the license at that time. Public Utility District No. 1 of Chelan County, Washington, 51 FPC 1141 (1974).

The standard for determining the need for an EIS is whether the action is a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(c). The key, however, is whether the issuance of the new license for the project significantly affects the quality of the environment. The test for determining if the impacts are significant is twofold:

(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area affected by it; and,

(2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area.

Hanly v. *Kleindienst*, 471 F.2d 823, 830 (2nd Cir. 1972). The issuance of a new license for this project does not fit either of the criteria that establishes an impact as significant. Other than the continuing impacts on the fisheries resource, the Fisheries Service has failed to identify any environmental impacts caused by the issuance of the license. We find no impacts that should be addressed by staff in an EIS. The continuing impact of the project on the fisheries resource is being addressed in the separate proceeding. The license is adequately conditioned to provide for the protection of the environmental resources of the project area. We find that the issuance of the new license for Project No. 943 does not significantly affect the quality of the human environment and, therefore, no EIS is required.

New Development in the Law

The Fisheries Service argues that the Pacific Northwest Electric Power Planning and Conservation Act ("Pacific Act"), 16 U.S.C. § 839, *et seq.*, requires that

the fisheries resource receive equal treatment with power production in the decision-making process. The Fisheries Service asserts that the Director's order fails to make the appropriate finding that the fisheries resource is receiving equitable treatment.

The Pacific Act states that agencies that regulate hydroelectric development, such as this Commission, shall:

> exercise such responsibilities . . . in a manner that provides equitable treatment for such fish and wildlife with other purposes for which system and facilities are managed and operated. (Section 4(h)(11)(A)(i).

As we have often repeated in this order, the separate proceeding is providing a forum to ensure that the fisheries resource receives appropriate treatment.

In describing the separate proceeding the Director's order states:

> . . . (the Licensee) is conducting studies to investigate the effect of the project on the downstream migration of juvenile salmonids, the methods of improving protection and natural production of salmonids and the methods of improving and increasing semi-natural and artificial production of salmonids from the Mid-Columbia River.

The new license is conditioned so that appropriate changes in project operation and structures can be made, if needed, to ensure that the fisheries resource receives the appropriate treatment. The decision, however, cannot be made without an adequate record. The separate proceeding has developed interim protections for the resource while a record is being developed to provide for long-term protection and enhancement of the resource. We find that the fisheries resource is receiving the appropriate treatment by this Commission.

The Fisheries Service also argues that the Pacific Act requires the Commission to consult with them. The application for license in this proceeding was processed pursuant to our normal procedures. This includes specifically requesting federal, state and local agencies to comment on the application. Notice was also published in local newspapers and the *Federal Register* requesting comments. These procedures ensure that the consultation requirements of various statutes are met. We believe that these procedures are adequate for any consultation requirements of the Pacific Act.

Pursuant to the Pacific Act, a regional fisheries plan is being developed.[7] The Fisheries Service argues that an article should be included in the license requiring compliance with the regional fisheries plan. We are not including an article in the license requiring compliance with the regional fisheries plan. The plan has not yet been developed. Compliance with the plan by projects licensed by this Commission is not mandatory.[8] The separate proceeding is to determine, in part, the effect of the project on the fisheries resource. We believe that it would be imprudent to adopt such an article with two unknowns present; that is, what the regional plan is and the extent of the projects' impacts on the fisheries resource. Therefore, we are denying the request for an article requiring compliance with the as yet undeveloped regional fisheries plan. Of course, the regional plan should in the future serve as an important document in determining the long-term solutions for protection and enhancement of the fisheries resource in Mid-Columbia River. We are including Article 45 in the license to reserve to the Commission the authority to re-examine the project when the regional plan is adopted.

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[7] The plan is to be completed by November 15, 1982.

[8] *See* Section 4(h)(11)(A)(ii) of the Pacific Act.

The Yakimas argue that the Director's order fails to reflect the Commission's obligations under *U.S.* v. *Washington, Phase II*, 506 F. Supp. 187 (W.D. Wash. 1980).[9] The Licensee argues that the Indian Treaty rights are being taken care of in the separate proceeding. The Licensee notes that Yakima Indian Reservation is outside of the physical coverage of the Phase II decision.

The Director's order maintains the status quo with respect to any impacts that the project may have on the fishery habitat. If, however, the project does impact the fishery habitat in which the Yakima claim treaty rights, the separate proceeding will resolve that issue. We find no reason to amend the Director's order to discuss this issue.

Access to Data

The Fisheries Service requests that it have full and complete access to all data and information and that it be fully consulted on all fishery matters. The Licensee did not respond to these requests.

The data and information being generated in the separate proceeding is available to all of the parties. Also, the Licensee is required to consult with the Fisheries Service in the preparation of its revised Exhibit S and additionally in accordance with the applicable statutes.

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[9] *U.S.* v. *Washington*, Phase I (*Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658 (1979)) establishing that certain tribes whose treaties reserved the right to fish at their usual and accustomed fishing places were entitled under certain circumstances to one half of the fisheries resource. Phase II found that implicit in the treaties was "the right to have the fishery habitat protected from manmade despoliation". 506 F. Supp. at 203.

The Commission orders:

A) Article 38 of the license for Project No. 943 is amended to read as follows:

Article 38. The Licensee shall, on or before August 31, 1982, file for Commission approval a revised Exhibit S including, among other things, "as constructed" fishery drawings prepared in accordance with the Commission's Rules and Regulations, the results of the pre-and post flooding studies, and any proposals for mitigative measures needed to protect and enhance the fish and wildlife resources affected by project operation.

B) The license for Project No. 943 is amended to include the following article:

Article 45. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife plan developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

C) All other requests on appeal of the order issuing a new major license for Project No. 943 are denied.

D) The appeal and subsequent filings made by the National Wildlife Federation are rejected.

By the Commission.

[SEAL]

/s/ Kenneth F. Plumb
KENNETH F. PLUMB
Secretary

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

FISH AND WILDLIFE
RESOURCES

Before Commissioners: C.M. Butler III, Chairman;
Georgiana Sheldon and
Oliver G. Richard III.

Project Nos. 943-012, 013, and 014

PUBLIC UTILITY DISTRICT NO. 1 OF)
CHELAN COUNTY, WASHINGTON)

ORDER ON REHEARING

(Issued November 23, 1982)

Applications for rehearing have been filed by the National Marine Fisheries Service ("NMFS")[1] and the Public Utility District No. 1 of Chelan County, Washington ("PUD") of our order denying NMFS's appeal of the issuance of a new license for the Rock Island Project No. 943.[2] NMFS is concerned primarily with the project's im-

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[1] NMFS filed its petition for rehearing jointly with the Oregon Department of Fish and Wildlife and the Yakima Indian Nation. However, only NMFS has filed and been granted intervention in this proceeding. In accordance with Section 313 of the Federal Power Act, rehearing only lies for those that are parties to the proceeding (*i.e.*, intervenors). Therefore, the petition for rehearing as it relates to Oregon and Yakima was not accepted for filing. For the same reasons, the petition for rehearing filed by the National Wildlife Federation also was rejected.

[2] 19 FERC ¶ 61,223 (June 4, 1982).

pact on the Columbia River fisheries. The PUD objects to certain aspects of Articles 38 and 45 of the license.

Appeal by NMFS

1. *Request For New Hearing*

NMFS again objects to the Commission's use of a "separate" proceeding to address the project's impact on the Columbia River fisheries.[3] NMFS argues that the license should not have been issued without adequate conditions to protect the fisheries, and that a record to support these conditions could be developed at a hearing. According to NMFS, the hearing should address technical issues such as flows, spills, collection and by-pass, and compensation.

NMFS's complaint that the fishery problems related to Project No. 943 should not be addressed in the context of the on-going proceeding appears to stem from NMFS's frustration and impatience with the pace of that proceeding. This proceeding was established at the request of federal and state fishery management agencies in order to develop a record to determine what changes, if any, should be made in project structures and operation in order to preserve, protect, and enhance the Columbia River fisheries. We do not think that the public interest would be well served by disbanding the existing proceeding and instituting a new one in order to accommodate one of the participants. NMFS's request for a new proceeding appears to be little more than an attempt to circumvent the Commission's current effort to compile an adequate and orderly record on these issues. If NMFS perceives deficiencies in the on-going proceeding, the bet-

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[3] The "separate" proceeding, which is currently pending before an Administrative Law Judge, consolidates for hearing and resolution the question of the effect of Project Nos. 943, 2114, 2145, and 2149 on the Columbia River fisheries. *Public Utility District No. 2 of Grant County, Washington, et al.* 6 FERC ¶ 61,210 (Mar. 7, 1979).

ter course would be for it to try to correct those deficiencies in the context of that proceeding.

2. *Need For EIS*

NMFS also argues that an environmental impact statement should have been prepared prior to issuing the new license. On this point, NMFS raises no new arguments that have not been discussed in our previous orders in this docket. We find that the environmental record already compiled is adequate to support our order issuing a new license for the existing Rock Island Project, especially in light of our decision to include open-ended conditions pertaining to fisheries that will be finalized on the basis of the record compiled in the on-going proceeding discussed above.

3. *Equitable Treatment of Fisheries Issues*

On another matter, NMFS argues that relegating the fisheries issue to a separate proceeding, while approving the power operations by issuing a new license, is not equitable treatment of the fisheries as contemplated by the Pacific Northwest Electric Power Planning and Conservation Act ("Pacific Act").[4] Section 4(h)11(A)(i) of the Pacific Act requires that the fisheries be given equitable treatment with other project purposes in the decision-making process.

We first note that the Commission, long before passage of the Pacific Act, has sought to balance power and fisheries interests when issuing licenses. Secondly, in issuing new licenses for old projects, as is the case here, we have often found it necessary to have the applicant and interested agencies conduct rather detailed fisheries studies of several years' duration. When there is only one applicant for the new license, it frequently makes sense to go ahead and issue the new license before the lengthy

[4] 16 U.S.C. § 839 *et seq.*

studies are complete, so as to put in effect sooner the new license conditions, which relate to *all* aspects of the project and in many cases strengthen the protection of other aspects of the public interest in the project. Because this procedure enhances our regulatory posture and enables us to better deal with environmental issues, we cannot concur in NMFS's complaint that the fisheries are being short-changed by our issuance of the new license.

4. *Requirement to Consult*

On the matter of consultation with fish and wildlife agencies and Indian Tribes under section 4(h)(11)(B) of the Pacific Act, NMFS asserts that the Commission must do more than provide public notice and opportunity for comment on the application. NMFS overlooks the fact that our regulations require consultation between applicants and agencies prior to filing of the application.[5] The applicants meet with the agencies and seek review and comment on the draft application. We believe that this pre-filing consultation, coupled with the agencies' post-filing opportunity to review and comment on the application, satisfies the consultation requirements of the Pacific Act.

5. *NMFS's Stricken Pleading*

Finally, NMFS objects to our striking its answers to the PUD's response to its petition for appeal. We struck NMFS's filing because it "merely expands on or responds to arguments previously presented." 19 FERC ¶ 61,233 at 61,438. NMFS, however, contends that the stricken filing addresses new issues, and is not merely a further explication of old issues. We have re-examined NMFS's filing, and are unable to identify any new issues addressed therein. Accordingly, we reaffirm our decision to strike this repetitious filing from the record.

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[5] *See* 18 C.F.R. § 4.41 (1982).

PUD's Petition for Rehearing

The PUD argues that the date specified in Article 38 for submission of a revised Exhibit S (fish and wildlife report) is impractical, because the fishery studies have not been completed. The PUD states that agreements on the studies have now been reached with the fish and wildlife agencies.[6] The PUD therefore requests that Article 38 be amended to extend the filing date of the revised Exhibit S until May 1984. Under the circumstances, we are persuaded that the PUD's new schedule is reasonable and should be adopted. Article 38 will be amended to reflect the new schedule.

The PUD also argues that any re-examination of the project pursuant to Article 45 should be tempered by a "reasonableness" standard, and that any alterations to the project not be ordered without notice and opportunity for a hearing.[7] Our actions are always governed by a rule of reasonableness, and where license articles are left open-ended for a future determination, notice and opportunity for a hearing are inherent.[8] The PUD's proposed amendment of Article 45 is rejected.

The Commission orders:

All pending motions and petitions for rehearing are denied, except for the PUD's request that Article 38 of the license be amended as follows:

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[6] The Washington Department of Game apparently does not agree with the PUD's new schedule, and takes the position that the revised Exhibit S should be filed as soon as possible. And as previously discussed, NMFS maintains that the license application should not have been accepted nor the license issued until a revised Exhibit S has been filed.

[7] Article 45, which was added to the license by our previous order on appeal, reserves to the Commission authority to re-examine the project license when the regional fish and wildlife plan is adopted for the Pacific Act.

[8] *See Central Maine Power Company*, 40 FPC 1132 (1968), *reh. den.*, 40 FPC 1512 (1968); *Louisville Gas and Electric Company*, 18 FERC ¶ 61,215 (Mar. 4, 1982).

Article 38. The Licensee shall on or before May 31, 1984, file for Commission approval a revised Exhibit S including, among other things, "as constructed" fishery drawings prepared in accordance with the Commission's Rules and Regulations, the results of the pre- and post-flooding studies, and any proposals for mitigative measures needed to protect and enhance the fish and wildlife resources affected by project operations.

By the Commission.

[SEAL]

/s/ Lois D. Cashell
LOIS D. CASHELL,
Acting Secretary.

C. Order Denying Petition for Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nos. 82-7561
82-7562
83-7038

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *et al.*,
Petitioners,

and

NATIONAL WILDLIFE FEDERATION,
Petitioner-Intervenor,

and

MALCOLM BALDRIGE, SECRETARY OF COMMERCE,
Petitioner,

and

WASHINGTON STATE DEPARTMENT OF FISHERIES AND WASHINGTON STATE DEPARTMENT OF GAME,
Intervenors,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent,

and

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON,
Intervenor.

ORDER

Before: ANDERSON and FLETCHER, Circuit Judges, and EAST,* District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The opinion filed June 7, 1984 is amended as follows: The last full paragraph on page 2502 of the slip opinion and the first phrase of the last paragraph are eliminated and replaced with:

> "A primary consideration in relicensing of projects now owned by a state or municipality is whether FERC should recommend to Congress recapture (or takeover) by the United States. 16 U.S.C. § 807. Although takeover is not among FERC's options in this case, since Chelan is a municipality as defined in 16 U.S.C. § 796(7), *see* 16 U.S.C. § 828(b) (takeover not permitted of projects owned by a state or municipality). FERC still retains several options that it must consider in an EIS. FERC can relicense to Chelan, relicense to another licensee, or issue a non-power license. *See* 16 U.S.C. § 808(a) & (b).
>
> "The [C]ommission is authorized . . ."

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

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* The Honorable William G. East, Senior United States District Judge, District of Oregon, sitting by designation.

II. STATUTES

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16 U.S.C. § 799 (1982)

§ 799. License; duration, conditions, revocation, alteration, or surrender

Licenses under this subchapter shall be issued for a period not exceeding fifty years. Each such license shall be conditioned upon acceptance by the licensee of all of the terms and conditions of this chapter and such further conditions, if any, as the Commission shall prescribe in conformity with this chapter, which said terms and conditions and the acceptance thereof shall be expressed in said license. Licenses may be revoked only for the reasons and in the manner prescribed under the provisions of this chapter, and may be altered or surrendered only upon mutual agreement between the licensee and the Commission after thirty days' public notice. Copies of all licenses issued under the provisions of this subchapter and calling for the payment of annual charges shall be deposited with the General Accounting Office, in compliance with section 20 of Title 41.

16 U.S.C. § 808 (1982)

§ 808. New licenses and renewals; compensation of old licensee; licenses for nonpower use; recordkeeping

(a) If the United States does not, at the expiration of the original license, exercise its right to take over, maintain, and operate any project or projects of the licensee, as provided in section 807 of this title, the commission is authorized to issue a new license to the original licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee, which license may cover

any project or projects covered by the original license, and shall be issued on the condition that the new licensee shall, before taking possession of such project or projects, pay such amount, and assume such contracts as the United States is required to do in the manner specified in section 807 of this title: *Provided*, That in the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the original licensee, upon reasonable terms, then the commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the original license until the property is taken over or a new license is issued as aforesaid.

(b) In issuing any licenses under this section except an annual license, the Commission, on its own motion or upon application of any licensee, person, State, municipality, or State commission, after notice to each State commission and licensee affected, and after opportunity for hearing, whenever it finds that in conformity with a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses all or part of any licensed project should no longer be used or adapted for use for power purposes, may license all or part of the project works for nonpower use. A license for nonpower use shall be issued to a new licensee only on the condition that the new licensee shall, before taking possession of the facilities encompassed thereunder, pay such amount and assume such contracts as the United States is required to do, in the manner specified in section 807 of this title. Any license for nonpower use shall be a temporary license. Whenever, in the judgment of the Commission, a State, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision of the lands and facilities included under the nonpower license and does so, the Commission shall thereupon terminate the license. Consistent with the provisions of sections 828 to 828c of this title, every licensee for nonpower use shall keep such accounts and file such annual

and other periodic or special reports concerning the removal, alteration, nonpower use, or other disposition of any project works or parts thereof covered by the nonpower use license as the Commission may by rules and regulations or order prescribe as necessary or appropriate.

42 U.S.C. § 4332(2)(C) (1982)

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

The Congress authorizes and directs that, to the fullest extent possible: . . . (2) all agencies of the Federal Government shall—

. . .

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has juris-

diction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes . . . .

III. OTHER MATERIALS

A. Order Amending License

Before Commissioners: John N. Nassikas, Chairman; Albert B. Brooke, Jr., Rush Moody, Jr., William L. Springer and Don S. Smith.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, PROJECT NO. 943

ORDER AMENDING LICENSE (MAJOR)

(Issued March 29, 1974)

Application was filed on February 15, 1973, and revised on March 23, 1973, by Public Utility District No. 1 of Chelan County, Washington (Applicant) for amendment of the license for Rock Island Project No. 943. Supplemental information was filed on February 23, April 2, April 9, April 12, and May 31, 1973. The approval of the proposed amendment would allow the Applicant to construct a second project power plant and modify the existing dam to permit the reservoir forebay to be raised 6.1 feet vertically.

Public notice of the filing of the application was given on April 19, 1973, with an extended date of June 15, 1973, as the last day for filing of protests or petitions to intervene.

The project is located on the Columbia River near the cities and towns of Chelan, Ephrata, Rock Island, Waterville, and Wenatchee, in Chelan and Douglas Counties, Washington. The existing project would be modified to include a semi-outdoor type powerhouse containing eight

horizontal shaft, bulb-turbine generator units (51.3 mw each), a new fish passage facility replacing the existing right bank fish ladder, extension of the existing middle and left bank fish ladders, addition of two miles of new 115-kv transmission lines, raising Rock Island reservoir 6.1 feet from 608.0 to 614.1 feet (U.S.G.S. datum), and other alterations to existing facilities to accommodate the raised reservoir forebay. The new 410,400-kilowatt plant would provide additions in regional peaking capacity of about 383 mw, and an increase in the average annual generation of about 1,296 million kilowatt-hours. The 18-unit project is estimated to have an average annual energy generation of 2,780 million kwh.

The Applicant, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington, intends to finance the proposed addition to the project by the issuance of electric revenue bonds. The interest and principal of these bonds, similar to those it has issued for other projects, will be paid from revenues derived from the sale of power produced by the project. Applicant foresees that the total bond issuance to be in the order of $140 to $150 million depending upon the financing interest rate. Included in Exhibit G of the application is the status and rating of bonds, as of December 31, 1971, previously issued by the Applicant.

By order of the Washington State Department of Ecology on October 12, 1973, there was issued to the Applicant in Docket No. DE-73-179 a modification of water quality criteria. On March 5, 1974, the Commission received the Applicant's water quality certificate issued by Washington State Department of Ecology.

Interested Federal, State, and local agencies have reported favorably on the application. The applicant has had the opportunity to respond to all the comments, and did so to some of them on September 28, 1973. While no agency objected to amending the license, there were re-

quests that certain conditions be included in any license amendment issued. The revised articles and additional special articles included in the ordering paragraphs would update the present license and provide further for the protection and development of fish, wildlife, water quality, recreation, scenic and other environmental values at the project.

The Atomic Energy Commission in a letter dated June 25, 1973, believes that the project will have no effect on its Hanford Plant operations. They were satisfied with the treatment of nuclear generation alternative.

The Department of Agriculture, Forest Service, in a letter dated July 24, 1973, states that the proposal will have no primary or secondary effects on the Wenatchee National Forest.

The Department of Army, Corps of Engineers, by letter of June 28, 1973, states that the proposed modifications will have minimal effects on flood damage reductions downstream of the project and navigation in the vicinity of the project. The plans for the structures affecting navigation are satisfactory. They suggest that the backwater could have an effect on the outlet structures of the authorized flood control project for Canyons 1 and 2 in Wenatchee, Washington. Any revisions of the backwater curves of the Exhibit H in the application should be reported to the District Engineer of the Corps. Article 64 added to the license by this order provides for the Corps' recommendation.

By letter of June 1, 1973, the Department of Commerce, National Marine Fisheries Service, recommended three special conditions to be contained in any license amendment issued for the project. These included: (a) Applicant shall finance preflooding and postflooding studies to determine any project effects on fishery resources and any costs for conservation and development of fish resources which are deemed to be necessary by the

studies; (b) Applicant shall provide for construction, maintenance, and operation of facilities for the conservation and development of fish and wildlife resources and modify any project structures as ordered by the Commission; and (c) Applicant shall permit the United States to construct or otherwise provide for fish and wildlife facilities at the project. Commerce also commented on the submitted Exhibit S stating that the study program as indicated will probably be greater in scope, cost, and recognition of needed facilities. Special Articles 48 and 49 and amended license Article 21 provide for Commerce's request.

In a letter dated August 6, 1973, the Department of the Interior did not object to the project. However, Interior desired that there be some clarification of most of the exhibits submitted. Their main concern was in the delay allowed for the filing of an Exhibit R; however, we believe it reasonable to allow one year for filing of the Exhibit R. Interior's comments on the Exhibit W generally dealt with the need for more information and a thorough investigation of matters, such as the potential direct relation between project implementation and landslide activity. The comments were considered in Staff's Draft Environmental Impact Statement. The amended license articles and additional articles are consistent with Interior's comments on Staff's Draft Statement.

Washington State Department of Game questioned the adequacy of certain statements in their letter of June 22, 1973. They point out that some of the conclusions in the application cannot be proven until the contemplated studies are completed. Game's main contentions deal with the effect of the bulb turbine on migrants, nitrogen saturation in the tailrace, loss of game habitat, loss of nesting sites, and the effect on wildlife.

By letter of June 6, 1973, the Washington State Department of Fisheries insists that provisions be made for

screening the turbines and by-passing the juveniles since the evidence is inconclusive as to what the effect of the bulb turbines will be on the juveniles. They were also interested in the nitrogen super-saturation, the fish runs, and spawning areas. The matters raised in Fisheries' and Game's letters were considered in detail in Staff's Final Environmental Impact Statement and provided for in revised Article 21 and in Article 48.

The Douglas County Citizen Advisory Committee for the Shoreline Management Act in a letter dated May 30, 1973, expressed concern over the orchards that will be affected by the enlarged project. The Committee requests that more be done dealing with the golf course; they suggest that it be relocated and propose alternate sites. They stress its value to the community, and not just as a recreational area. Other points of concern that the Committee raised were wildlife nesting areas, changes in groundwater elevations, and the mosquito situation in the slough areas. Article 50 calls for pre- and post-flooding studies on the effects of raising groundwater levels. Article 51 provides for vector control. Article 55 requires the filing for Commission approval of an Exhibit R (Recreational Use Plan) which would include alternatives to, if not replacement of, the golf course.

The Board of County Commissioners of Douglas County, Washington, in their letter of April 9, 1973, foresee no extensive damaging environmental impact. They stated that the applicant would be required to pay for improving or replacing the needed road which would be inundated. Article 54 requires the Applicant to consult and cooperate with them as to the relocation of roads.

The Department of Transportation, United States Coast Guard, by letter of June 5, 1973, expressed concern that the increase in the generating capacity may have some effect on the problem of inductive coupling with railroad signal and communications lines. In their

letter of August 17, 1973, they would like to have more information on the effects of river flow manipulation on future navigation and other problems a mariner might face particularly when there are abrupt current changes. Amended Article 11 concerns the problem of inductive interference. Article 63 provides for consultation with the railroad on needed alterations.

Washington State Department of Social and Health Services on May 24, 1973, directed its comments towards the mosquito problem and the relocation of people. The Department of Housing and Urban Development on May 21, 1973, was also concerned with the relocation of persons. They would like to see more information on the replacement of the approximately 50 acres of agricultural land and the golf course. Special Article 55 deals with the golf course, and Special Article 58 provides for a relocation advisory service. Special Article 51 provides for vector control.

The Washington State Highway Commission on June 13, 1973, lists three areas of concern which were: (a) the Columbia River Bridge at Olds presently under construction; (b) the proposed alignment of SR-28 along the east bank of the Columbia River at 19th Street of which substantial portions of the gravel bar will be inundated; and (c) sections of existing SR-28 between Sta. 470 and 480 and Sta. 571 and 533 to be affected by the raised backwater encroachment. The Department does not object to the proposed action, they only desire that proper identification of impact on the existing and proposed highways is made and proper protective measures are included in the proposal. These matters were considered fully in Staff's Final Environmental Impact Statement. Special Article 54 provides for consultation as to the relocation of roads.

The Environmental Protection Agency (EPA) reporting on June 11, 1973, offered no objection to the license amendment. EPA said that the amendment would allow

more efficient use of the waters of the Columbia River and it should also reduce supersaturation of dissolved gases in the flow. Article 48 provides for the monitoring of dissolved nitrogen levels and temperature as recommended by EPA.

Other agencies commenting on the proposed amendment and offering no objection included the Pacific Northwest River Basins Commission by letter of August 8, 1973, Department of Health, Education, and Welfare by letter of June 13, 1973, Washington State Parks and Recreation Commission by letter of July 26, 1973, State of Washington Office of Program Planning and Fiscal Management by letter of July 6, 1973, and State of Washington Department of Natural Resources by letter of April 12, 1973.

On June 15, 1973, a petition to intervene was filed by the Washington Department of Fisheries and Department of Game (Departments). The Departments felt it necessary to petition because of the possible effects of the proposed action upon food fish, game fish, and wildlife resources of the State. They suggest that research studies be done. They were at that time negotiating with the pertinent agencies for funding for the studies. On July 27, 1973, Applicant filed an answer to the Departments' petition. While the Applicant stated that they did not oppose the petition, they think that the Departments' rights and interests will be protected and preserved by research, investigations, and studies to be funded by the Applicant. The petition to intervene was granted by the Commission in an order issued September 18, 1973. We believe that the Departments' rights and interests are being amply protected by the studies being conducted in cooperation with the Applicant. License articles are being included to insure protection.

On June 14, 1973, Public Utility District No. 2 of Grant County, Washington (Grant) filed with the Commission a petition to intervene in the proceedings. The

basis for Grant's petition is the contract between Applicant and Grant in which Grant pays to Applicant money for lost energy at Rock Island due to the encroachment by its Wanapum Reservoir of Project No. 2114. They are fearful that by enlarging Rock Island, Applicant will ask for increased payments to help finance the construction. On July 27, 1973, Applicant answered Grant's petition contending that Grant will be liable for any power or energy loss, damage, and expense due to encroachment after the expansion of Rock Island is completed. Applicant feels that the problem can be solved through briefing rather than an evidentiary hearing. They are arguing that the issue is legal not factual. Applicant also states that if any damage arises from the construction and operation of the new powerhouse they, the Licensee, would be held liable under Section 10(c) of the Federal Power Act. Intervention was granted by the Commission on September 18, 1973.

On August 13, 1973, Grant filed a reply to Applicant's answer to the petition to intervene. In the reply, Grant contends that the issues involved are a mixture of fact and law, and, thus, would require a factual record before any meaningful briefs could be submitted. We believe that neither this proceeding nor this forum is the proper place to solve a possible question of money damages [1] involving a contract made in the State of Washington. Although intervenor's license for Project No. 2114 refers to this contract and requires compliance with its terms, the contract provisions are not made a part of the license.[2] Because the problem is one of contractual right to payments between Applicant and Grant, not involving the cost of construction, feasibility of the proposal, nor en-

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[1] See *Idaho Power Company*, 29 FPC 572.

[2] See *P.U.D. No. 2 of Grant County*, 14 FPC 1067. Although requested to do so (14 FPC at 1070), the Commission declined to include the applicant's obligation under the agreement as conditions of any license issued (14 FPC at 1074).

vironmental effects; the controversy should not delay the construction. Therefore, the issues raised in the petition dealing with the contract and payments thereunder do not require an evidentiary hearing before the Commission nor a determination by the Commission at this time. It is significant to note that the question of power loss can be best established after the powerhouse is placed in operation. Further, no damages under the contract can be established prior to that time.

On December 14, 1973, the Washington State Department of Highways (Highways) petitioned the Commission to intervene in the proceedings to insure greater protection for their interests. The proposed addition will effect Highways in these ways: (a) possibility of altering the structure or modifying the permit for clearance of a bridge of SR-2 currently under construction; (b) possible modification of the frontage road grade on the proposed alignment of SR-28 along the east bank of the Columbia River; and (c) possibility of raising the highway grade of existing SR-28 between Sta. 470 and 480 and Sta. 517 and 533 where the backwater will encroach onto the right-of-way. The petition of Highways was granted by order of the Commission issued on February 27, 1974. It would appear that Highway's rights are being sufficiently protected. Applicant appears to realize its obligations as illustrated on page 3 of the Exhibit F in that they intend to work with Highways to fully protect the highway system. There is to be included in the license Article 54 to require the Licensee to consult and cooperate with Highways in the relocation of roads.

The Commission received several protest letters, including one from Mayor M. A. Guerin of Rock Island, concerning the inundation of the nine-hole golf course in Rock Island, Washington. The Mayor was also concerned about the slough areas. They were disturbed because the golf course is being destroyed and there were no provisions for its replacement. However, the Applicant stated

on pages 5-4 of its environmental report (Exhibit W) that they will consult with governmental bodies, interested persons, and organizations as to the need for and economic feasibility of replacing the golf course. They said that a provision for other compensating recreational facilities, if not the golf course, is anticipated as being included in the Recreational Use Plan (Exhibit R) to be filed. Applicant is allowed one year to submit the Exhibit R following approval of the application for amendment of the license.

The Applicant has submitted an environmental report. Based upon this report and an independent investigation of its own, the Commission Staff compiled a Draft Environmental Impact Statement and circulated it on October 31, 1973, among the interested Federal, State, and local agencies as well as to individuals and organizations for comment. After consideration and review of these comments, a Final Environmental Impact Statement was prepared by our Staff which was distributed on January 28, 1974. On the basis of the information contained in the Staff's final statement and other material on file with the Commission, we are of the opinion that the beneficial effects from construction and operation of the additional powerhouse at Rock Island will offset any adverse effects on the environment of the area.

We have carefully considered the environmental impact of the proposed project. There will be an impact on land resources of the project area resulting from the installation of a second powerhouse and raising of the reservoir level. An additional 335 acres of land will be flooded as a result of this action. These lands support a wide range of activities which included natural, commercial, residential and recreational activities. Six businesses and industries will be inundated resulting in their relocation, abandonment, or additional construction for protection. Flooding will also inundate sixteen residences of which fourteen are inhabited. These persons will have to be

relocated. Some irrigation systems and domestic wells may be affected by higher groundwater levels. Approximately 50 acres of orchards will be inundated or adversely affected through root saturation. This represents about $225,000 in estimated land value. The recreation to be affected includes a nine-hole municipal golf course near the town of Rock Island, three boat ramps on the reservoir, and sport fishing and wildlife.

Transportation facilities to be affected are a bridge under construction, some portions of a highway, and part of a highway, and part of the Burlington-Northern Railroad tracks. All of these can be modified to allow the continuation of their use.

Various studies, both pre-flooding and post-flooding, are being financed by the Applicant to be undertaken by Federal and State agencies to determine the effect of the reservoir raising and additional powerhouse on the fish, wildlife, and natural habitat such as the taking of nesting areas. Applicant proposes to have periodic site inspections by professional archeologists to provide for protection of any archeological resources affected by the construction. No historical sites will be affected by the proposed action.

During the construction there will be some strain on the socioeconomic community. Even though the Applicant intends to recruit the majority of the construction force from the vicinity of the project, there will be an increase in the use of local resources and public facilities by the influx of additional construction workers. This impact, however, is expected to be minimal and probably only for 14 months. What impact there is, could be at least partially offset by a growth in the local tax base to which these people would contribute.

For about 14 months in the immediate vicinity of the construction the air quality will be adversely affected by emissions from heavy equipment and dust due to excava-

tion. Noise levels would also be higher than normal. The water quality during construction could be affected by increased turbidity, sedimentation, and run-off from exposed slopes. Articles 59 and 60 require measures be taken to prevent stream siltation and to avoid or minimize any disturbance caused by the construction of the additional project works.

Once the addition to the project is completed, operation will continue generally as it does now, except that there will be a decrease in spillage with more water passing through the new turbines. This change should improve the nitrogen super-saturation content of the water due to the decrease in the spillage. The maximum reservoir drawdown for the proposal would be four feet to elevation 610.1 feet. Freeboard would be provided between the normal forebay level and the top of the spillway gates to avoid inadvertent overflows. The objective of maximizing resource utilization will be greater realized with the proposed addition.

The unavoidable adverse affects include the removal of 16 residences, and higher groundwater table might affect septic tank system, water quality, and health standards. Of the approximately 335 acres of land to be inundated, there are three areas of biotic interest that would be adversely affected: (a) Canada goose nesting grounds; (b) the slough area; and (c) the flood plain. Also taken or affected would be approximately 50 acres of orchards, transportation facilities, a nine-hole golf course, and three boat ramps. Unavoidable adverse effects on the anadromous fish could come about because of increase in depth of the water, change in water flow velocities, loss of some portion of existing spawning areas, and increased mortalities to downstream migrants by passing through turbines instead of over the spillway. There would be a loss of environmental quality during construction such as increased solid waste, sewage, noise levels, dust and

vehicle emissions, soil run-off, and consumption of local resources.

The short term environmental uses can be offset by the long term benefits of energy production and implementation of effective mitigative measures. For instance, the existing shoreline vegetative habitat would be lost, but it should gradually re-establish itself along shores of the enlarged reservoir. Relocating the families affected would cause them inconvience during that time. The temporary increase in population will put a strain on the environment and local resources.

There would be an irreversible and irretrievable commitment of resources such as construction materials and supplies. As long as the structure is in place, there would be an irretrievable commitment of shoreline vegetation used as wildlife habitat. Commitments such as land resources could be retrievable if the structure should be removed. Also lost would be the present land use of those acres that will be inundated. There could be the loss of downstream migrating salmonids because they would have to pass through the proposed powerhouse where mortality may be higher than if they were spilled.

Consideration has been given to alternatives to the proposed addition to the project. Those studied were other hydroelectric sites, combustion turbine, combined cycle, baseload oil-fired and baseload nuclear steam-electric generating plants, purchased power, and no action.

The so-called "exotic" alternatives, such as fusion power, solar power, and MHD, are not considered realistic alternatives because at the present none of adequate size are commercially developed. There has not been any known drilling for potential geothermal power generating resources in Washington, and the only known geothermal resource area is around Mount St. Helens near the Washington-Oregon border.

In the discussion of the combustion turbine alternative, the benefits are that the units are relatively small in size permitting installation near existing plants, have negligible cooling water requirements, and require short lead time for construction. The negative factors are low efficiency, high operating and maintenance costs, consumption of fuels in short supply, and emission of combustion by-products into the atmosphere. The annual cost of producing power by the combustion turbine does not compare at all favorably to the cost of power from the second power plant.

In considering the combined cycle plant, the beneficial aspects are capability of operating at high and intermediate load factors and its capability to firm dump and secondary hydro energy. The adverse factors of the combined cycle are many. They include siting problems, finding adequate cooling water, supply of fuel, use of a exhaustible natural resource, air pollution from stack emissions, consumptive use of water or in the alternative discharge of heated water, cost of providing condenser cooling and of constructing new transmission lines, and the adverse impact to scenic value. The annual cost of producing power would be substantially more than it would be at the Rock Island addition.

The advantages of a baseload oil-fired steam-electric plant would be capability of operating at high plant factor and possible use to firm dump and secondary hydro energy. The adverse effects are similar to those seen in the combined cycle plant. In addition large tanks to store the oil would have to be constructed increasing the cost and the adverse impact on the scenic values. The estimated total annual cost of producing power from this alternative would be substantially more than the proposal.

The nuclear steam plant benefits include a large amount of high load factor power, no release of combustion products into the atmosphere, and no consumption of fossil fuels. The negative aspects are siting problems,

need for large cooling water supply, use of an exhaustible natural resource, long lead time necessary for construction, problems and cost of disposing the spent nuclear fuel, and cost of providing condenser cooling, of constructing new transmission lines, and of fuel. The proposed development's annual cost of power would be substantially less than the nuclear steam plant.

The Pacific Northwest is already extensively developed for hydroelectric power, therefore the remaining potential hydroelectric projects are either under study, in some stage of development, or economically and/or environmentally undesirable. A review has shown that there are no potential hydroelectric projects in the area available to the Applicant which could be economically developed.

While conservation practices are desirable to reduce the demand for electric power, it appears that such practices are not likely to eliminate the need for power from the proposed development or some alternative thereto. Thus, in the alternative of no action, the Applicant and the Pacific Northwest Power Pool would need to provide equivalent power from other sources to meet their requirements. The waters flowing past the project, a renewable resource, would continue to be unused.

Currently, the Applicant is unable to purchase power from the Bonneville Power Administration equal to the output from the Rock Island project. In the future, if Applicant were able to purchase at present rates BPA power equivalent to project output, it would cost less than power from Rock Island. However, there are indications that the rates will increase this year and in the following years which could more than nullify any previous economic advantage of purchasing additional power.

Various Federal and State agencies in cooperation with the Applicant are conducting and proposing to conduct further studies to determine the effect of the addition on many aspects of the environment. When the studies are

completed, it is anticipated that the results will permit decision as to what additional mitigating measures may have to be undertaken in accordance with the terms of the license.

The additional United States lands, if any, to be occupied by the raised reservoir elevation cannot be determined at this time. The proposed Exhibit K shows the general location of the revised project boundary, but is lacking in essential survey and ownership data necessary to make a determination. The computation of the increase, if any, of annual charge for the use of United States lands will be made at a later date when the revised Exhibits F, J, and K are filed.

The Applicant provided information that the power would be taken entirely by Puget Sound Power and Light Company (Puget Sound) for the first 20 years, half each by Puget Sound and Applicant for the next 20 years, and entirely by Applicant for the remaining 10 years. From an economic analysis the proposed addition appears to be economically justified.

The proposed addition would affect no historical sites listed in the National Registry of Historic Places. However, the existing Rock Island dam, the first hydroelectric development on the Columbia River, is presently under consideration by the Washington State Parks and Recreation Commission for nomination to the National Registry. Archeological excavations between Rock Island and Rocky Reach (Project No. 2145) dams indicate use of the project area along the river by prehistoric Indian tribes. License Article 52 provides that any survey or needed salvage excavations should be done in cooperation with Washington State University.

To be also included in the license are the generator leads, the two 7.0/115 KV step-up transformers, the two 115 KV lines to the McKenzie-Valhalla substation, and appurtenant facilities of the proposed new plant.

The Commission further finds:

(1) Public notice of the filing of the application for amendment has been given. Intervention has been granted to Public Utility District No. 2 of Grant County, Washington, Washington Department of Fisheries, Washington Department of Game and Washington State Highway Commission.

(2) The installed capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 830,000 horsepower, and the amount of annual charge based on such capacity to be paid under the license for the project for the cost of administration of Part I of the Act is reasonable as hereinafter fixed and specified.

(3) The exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project to the extent indicated, and superseded exhibits should be eliminated from the license.

(4) Amendment of the license for the project does not affect any existing government dam. However, the Department of the Army, Corps of Engineers, while not objecting to the amendment, reports that backwater resulting from raising the reservoir elevation could affect the outlet structures of the authorized but unconstructed flood control project for Canyons 1 and 2 in Wenatchee, Washington. Accordingly, any revision to the backwater curves shown on Sheet 2, dated January 24, 1973, of Exhibit H to the application should be reported promptly to the District Engineer of the Seattle District of the Corps of Engineers.

(5) It is appropriate and in the public interest to amend the license for Project No. 943 as authorized herein.

The Commission orders:

(A) Licensee, Public Utility District No. 1 of Chelan County, Washington, is hereby authorized to construct, operate, and maintain a second project powerhouse and appurtenant facilities, install 410.4 MW of additional capacity in eight 51.3 MW generating units, and modify the existing dam to provide for raising the reservoir 6.1 feet at the Rock Island Project No. 943, located on the Columbia River in Chelan and Douglas Counties, Washington, effective the first day of the month in which the Commission acts on the application.

(B) Subparagraph B of Article 2 of the license for Project No. 943 is amended in part to read:

B. Project works consisting of:

(1) a concrete gravity dam about 3,580 feet long with a gated spillway section 1,184 feet long containing 31 crest gates; (2) a reservoir extending about 20 miles upstream having a normal maximum forebay elevation 614.1 feet U.S.G.S. and an active storage capacity of 11,000 acre-feet at a maximum reservoir drawdown of 4 feet for power operations; (3) a concrete powerhouse about 870 feet long integral with the dam containing one 15,000 KW generating unit, three 20,700 KW generating units, and six 22,500 KW generating units (10 units totaling 212.1 MW); (4) a step-up substation on the powerhouse roof; (5) a high-tension switching station on Rock Island; (6) four single-circuit 115 KV transmission lines extending from the switching station for a distance of about two miles to the McKenzie switchyard; (7) a 115 KV transmission line, including a 1.5 mile tap line to the Dryden substation, extending about 85 miles from the McKenzie switchyard to the Town of Skykomish; (8) a second project powerhouse at the right bank about 465 feet long and 200 feet wide containing eight 51.3 MW horizontal shaft, bulb-turbine type generator units (8 units totaling 410.4 MW); (9) step-up transformers at

the second powerhouse connected to two single-circuit 115 KV transmission lines extending about two miles to the McKenzie-Valhalla substation; (10) three fishways and related fish facilities; and (11) appurtenant facilities:— the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited in subparagraph A, and by certain other exhibits which accompanied the application for license, or the applications for amendments thereof, and which are designated and described as follows:

Exhibit	FPC No. 943	Showing
J	-120	General Map of Project Area.
K-1	-121	Project Boundary Map.
K-2	-122	Project Boundary Map.
K-3	-123	Project Boundary Map.
K-4	-124	Project Boundary Map.
K-5	-103	Project Boundary Map.
K-6	-104	Project Boundary Map.

which are approved only insofar as they show the general location of project facilities.

Exhibit	FPC No. 943	Showing	Superseding Exh. FPC No. 943
L-1	-105	General Plan of Development	-78
L-2	-106	Second Powerhouse Plan	
L-3	-107	Second Powerhouse Cross Section	
L-4	-125	Second Powerhouse Main One Line Diagram	
L-5	-109	Existing Spillway Dam	-86, -93, -94
L-6	-126	Existing Powerhouse Sections	-63, -65, -80

Exhibit M: Consisting of six typewritten pages entitled "General Description of Equipment", filed with the Commission on February 15, 1973.

Exhibit S: Consisting of ten typewritten pages entitled "Fish and Wildlife", an six drawings (FPC Nos. 943-111 through -116) filed with the Commission on February 15, 1973.

Exhibit V: Consisting of four typewritten pages entitled, "Protection and Enhancement of Natural, Historic, and Scenic Values," filed with the Commission on February 15, 1973.

(C) The exhibits designated and described in Paragraph (B) above are hereby approved to the extent indicated and made a part of this license and the superseded exhibits noted above are eliminated from the license for Project No. 943.

(D) Article 6 of the license for Project No. 943 is amended by adding the following paragraph:

> The Licensee, Public Utility District No. 1 of Chelan County, Washington, shall commence construction by March 1, 1975, of the additional project works included in the license by this order and shall thereafter in good faith and with due diligence prosecute such construction and shall complete construction of such additional project works within 5 years from the effective date of this order.

(E) Articles 22 and 23 are deleted from the license, and Articles 5, 8, 11, 14, 21 and 42 of the license for Project No. 943 are amended to read as follows:

Article 5. The construction, operation, and maintenance of the project and any work incident to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project. Construction of the project works or any feature thereof shall not be initiated until the program of inspection for the project works or any such

feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 8. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited in such a manner that it will reasonably preserve the project environmental values and so it will not interfere with traffic, both land and water. Dredging and filling in a navigable water of the United States will be done to the satisfaction of the District Engineer, Seattle District, Department of the Army.

Article 11. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any struc-

tures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 14. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purpose of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the License, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 21. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain and operate, or shall arrange for the construction, maintenance and operation of such facilities and comply with such reasonable modifications of the project structures and operations as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior, the Secretary of Commerce, or the Washington Departments of Fisheries and of Game, after notice and opportunity for hearing.

Article 42. The normal operating pool elevation shall be an elevation of 606.0 feet with variations up to a

maximum of elevation 608.0 for flows of 85,000 cfs or less. For inflows between 85,000 and 615,000 cfs, Licensee shall regulate the pond level so as not to exceed a maximum elevation of 608.0 feet. For inflows greater than 615,000 cfs, all spillway gates shall be open.

Upon completion of construction to raise the reservoir from elevation 608.0 to 614.1 feet U.S.G.S. datum, Licensee shall regulate the reservoir level so as not to exceed elevation 614.1 feet at the project dam for inflows up to 820,000 cfs. For inflows greater than 820,000 cfs, all spillway gates shall be open.

(F) Subparagraph A of Article 26 of the license for Project No. 943 is amended to read:

A. For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. Effective the first day of the month in which this order is issued, the authorized installed capacity for such purpose is 830,000 horsepower;

(G) The license is further amended by adding thereto the following special articles:

Article 48. The Licensee, in consultation and cooperation with the Fish and Wildlife Service, U.S. Department of the Interior; the National Marine Fisheries Service, U.S. Department of Commerce; the U.S. Environmental Protection Agency; and the Washington State Departments of Ecology, Fisheries and Game, shall conduct pre- and post-flooding studies to determine the effects of project redevelopment on Columbia and Wenatchee River fish and wildlife resources. As part of these studies, the Licensee shall monitor temperature and dissolved nitrogen levels above and below the Rock Island Project. The Licensee shall file, within three years after initial operation of the second powerhouse, for commission approval a revised Exhibit S including "as-constructed" fishway

drawings, prepared in accordance with the Commission's Rules and Regulations, and including among other things, the results of the pre- and post-flooding studies and any proposals for mitigative measures needed to protect or develop the water quality and fish and wildlife resources affected by project operation.

Article 49. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 50. The Licensee following consultation and cooperation with the Environmental Protection Agency and the Washington Department of Social and Health Services, shall conduct pre- and post-flooding studies on the effects of raising reservoir and ground water levels on septic tanks, industrial and domestic settling ponds, and well water systems, and shall implement any protective or mitigative measures needed for public health purposes, including relocation of sewage, waste or well facilities.

Article 51. The Licensee shall consult and cooperate with the Washington Department of Social and Health Services, and the Douglas County Planning Commission to

determine what, if any, vector control measures are needed at the project.

Article 52. The Licensee, in cooperation with Washington State University, shall do or pay the cost of doing (1) an archeological survey of the project area on which excavation or flooding will occur, and (2) any salvage work needed to preserve the archeological values affected by project construction and flooding. Copies of such surveys and salvage reports shall be filed for the information of the Commission.

Article 53. The Licensee shall cooperate with the Washington State Parks and Recreation Commission in helping to identify any historical sites at the project for nomination to the National Register of Historic Places.

Article 54. The Licensee shall consult and cooperate with the Washington State Highway Department and the Douglas County Board of Commissioners in the relocation of roads as required by the Rock Island redevelopment.

Article 55. The Licensee, within one year from the date of issuance of this order, shall file for Commission approval an Exhibit R (Recreational Use Plan). Exhibit R shall be prepared in conformance with Sections 4.41 and 4.42 of the Commission's Regulations and shall include outdoor recreation facilities alternative to, if not in replacement of, the nine-hole golf course to be inundated by the project.

Article 56. The Licensee shall construct, maintain and operate or shall arrange for the construction, maintenance and operation of such recreational facilities including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, and shall comply with such reasonable modifications of the project structures and operations as may be prescribed hereafter by the Commission during the term of this license upon its own mo-

tion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing.

Article 57. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting; Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property. Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on project lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstances, be subject to the payment of rent in a reasonable amount; *Provided*, that Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where feasible, and shall ensure that such facilities are constructed and maintained in such a manner so as to be consistent with shoreline aesthetic values; *Provided further*, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the license.

Article 58. The Licensee shall establish a relocation advisory service and give reasonable financial assistance to assist in the relocation of persons now located in the affected project area and to minimize any hardship to

such persons thereof arising from such relocation. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 shall be used as a guide to implement this article.

Article 59. The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream(s) and to prevent stream siltation or other forms of water or air pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion may order the Licensee to take such measures as the Commission may find to be necessary for these purposes after notice and opportunity for hearing.

Article 60. The Licensee shall in the design, construction, and maintenance of the additional project works including transmission lines, follow the Commission's "Guidelines for the Protection of Natural, Historic, Scenic and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" of Commission Order No. 414, 44 FPC 1491, and other recognized engineering and landscaping practices as may be needed to protect and preserve the environmental values of the project; and shall avoid or minimize any disturbance caused by construction and maintenance of the additional project works to the natural, scenic, historical and recreational values of the area, blending project works with the natural view, and revegetating, stabilizing, and landscaping any construction areas located outside the area of the project reservoir.

Article 61. The Licensee shall clear project areas to be flooded, dispose of all temporary structures, unused timber, brush, refuse, and inflammable materials resulting from the redevelopment of the project. Such work shall be conducted to the satisfaction of an authorized representative of the Commission.

Article 62. The Licensee shall, to the satisfaction of the authorized representative of the Commission, install

and operate such signs, lights, sirens or other devices below the powerhouses to warn the public of fluctuations in flow from the project, and shall install such signs, lights and other safety devices in the project reservoir, such as log booms above the spillway and powerhouse intakes, as may be reasonably needed to protect the public in its recreational use of project lands and waters.

Article 63. The Licensee shall consult and cooperate with representatives of Burlington-Northern Railroad in making any needed alterations to railroads affected by the Rock Island redevelopment.

Article 64. The Licensee shall consult and cooperate with the District Engineer, Seattle District, U.S. Army Corps of Engineers, on any needed alterations of project operations during flood flows in the Columbia River. The Licensee shall report any revision of the backwater curves shown on Exhibit H, Sheet 2, dated January 24, 1973, to the above-mentioned office.

Article 65. The Licensee shall retain a Board of two or more qualified independent engineering consultants, who have not participated substantially in the design of the proposed project works, to review the safety and adequacy of all features of the project as proposed for modification. Among other things, the Board shall assess the geology of the project site and surroundings; the design and specifications for the new powerhouse; the design and installation of post tensioned anchors in the existing powerhouse, spillway, and non-overflow sections; the construction inspection program; construction procedures and progress; and instrumentation of the completed project. The Board will review, evaluate, and report on each major element of project design prior to initiation of construction of that project element and will submit a final report upon completion of the project. The Licensee shall submit copies of all Board reports to the Commission.

Article 66. The Licensee shall install appropriate instrumentation or other devices to monitor movement, up-

lift, and continuing performance of the post tensioned project structures. A plan of instrumentation and a schedule of recording instrument readings shall be furnished to the Commission prior to initial operation of the proposed powerhouse. The Licensee shall furnish annually to the Commission, or as may be requested by the Commission or its authorized representative, a report and analysis of the instrument readings.

Article 67. The Licensee within five years from the date of issuance of this order shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the second project powerhouse. The Commission expressly reserves the right on approval of revised Exhibits R and K to be filed pursuant to the amended license to require acquisition of title in fee for lands needed for purposes of shoreline control and recreation in accordance with Order No. 313 (34 FPC 1546).

Article 68. The Licensee within one year from date of issuance of this order shall file with the Commission a revised Exhibit F and, for Commission approval, revised Exhibits J and K fully conforming to the requirements of § 4.41 of the Commission's Regulations to show the redeveloped project.

(H) This amendment in the manner set out above shall not operate to alter or amend the license in any other respects, and shall not in any way constitute a waiver of any other part, provision or condition of the license.

(I) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license amendment. In acknowledgment of the acceptance of this license amendment it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

B. Orders in Mid-Columbia Proceeding

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Hearing: Temporary and
Long-Term Flow Releases;
Fisheries

Before Commissioners: Don S. Smith, Acting Chairman;
Georgiana Sheldon and
Matthew Holden, Jr.

Project No. 2114

PUBLIC UTILITY DISTRICT NO 2
OF GRANT COUNTY, WASHINGTON

Projects Nos. 943 and 2145

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

Project No. 2149

PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, WASHINGTON

Docket No. E-9569

STATE OF WASHINGTON DEPARTMENT OF FISHERIES

v.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

ORDER CONSOLIDATING PROCEEDINGS, ESTABLISHING HEARING AND REQUIRING PREHEARING CONFERENCE

(Issued March 7, 1979)

Background

The recent petitions. The State of Washington Department of Fisheries and Department of Game, the Oregon Department of Fish and Wildlife, the U.S. National Marine Fisheries Service, and the Confederated Tribes and Bands of the Yakima Indian Nation (petitioners) have recently filed petitions asking the Commission to modify the operation of Priest Rapids Project No. 2114, Wells Project No. 2149, Rock Island Project No. 943 and Rocky Reach Project No. 2145, or, in the alternative, to institute a proceeding to consider their requests. The four projects are located on the Columbia River in the State of Washington.

The petitioners claim that commercial, Indian, and sport fisheries have suffered severe losses over the last twenty years due to the construction and operation of the four projects listed above. They are seeking certain minimum flows and spills at each project dam for the protection of the chinook, sockeye, and coho salmon and steelhead trout resources. The petitioners submitted provisional recommendations for instantaneous and daily average minimum flows, ranging from 10,000 cfs to 110,000 cfs, depending on the time of the year and the location of the project. They also request that during the period of spring juvenile downstream migration (April 26 through June 15), the equivalent of twenty percent of the average daily discharge at each project be spilled, rather than used to generate power.

The petitioners' requests are made pursuant to Article 39 of the license for Project No. 2114,[1] Article 41 of the

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[1] Public Utility District No. 2 of Grant County, Washington, Order Issuing License (Major), 14 F.P.C. 1067, 1073 (1955), *as amended*, 15 F.P.C. 1005, 1006 (1956).

license for Project No. 2149,[2] Article 21 of the license for Project No. 943,[3] and Article No. 31 of the license for Project No. 2145.[4] These articles generally require the licensees to comply with reasonable modifications to the operation of the project in the interest of fish and wildlife resources.

The petitioners assert that the licensees for these four mid-Columbia projects have been unable to obtain consent from their bulk power purchasers to accommodate the desired spring spilling. In addition, they state that the flows requested are also being negotiated with the Bonneville Power Administration, Bureau of Reclamation, and the Corps of Engineers for the upstream federal dams those agencies operate.

In separate answers, the licensees for the four mid-Columbia projects opposed the requested modifications, but stated that they are willing to discuss these matters with the petitioners. Generally, the licensees argue that the available evidence does not support a modification in the current operations of the projects. They state that alternative, less costly means are available to facilitate downstream migration. The licensees also assert that the Commission lacks the authority to require modifications in the current minimum flows, and that any such requirement without their consent would contravene Section 6 of the Federal Power Act, 16 U.S.C. § 799. In addition, the licensees contend that they cannot implement minimum flows until upstream federal projects—the Corps of Engineers' Chief Joseph and the Bureau of

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[2] Public Utility District No. 1 of Douglas County, Washington, Order Issuing License (Major), 28 F.P.C. 128 (1962), *as amended*, 28 F.P.C. 492 (1962).

[3] Public Utility District No. 1 of Chelan County, Washington, Order Amending License, 51 F.P.C. 1141, 1152 (1974).

[4] Public Utility District No. 1 of Chelan County, Washington, Opinion No. 304, 18 F.P.C. 25, 36 (1957).

Reclamation's Grand Coulee Dams—modify their flow releases.

The Priest Rapids complaint. Before these recent petitions, the State of Washington Department of Fisheries (Department) had filed a complaint on September 22, 1976, respecting the operation of the Priest Rapids Project No. 2114 (Docket No. E-9569).[5] The Department alleged that the area downstream from the Priest Rapids Dam serves as an important spawning and rearing area for fall chinook salmon. The Department claims that the 36,000 cfs minimum flow established in the project license[6] causes many valuable spawning areas to dry up, resulting in the stranding and subsequent death of eggs and juvenile fish. The Department requested that the minimum flow requirement in the license be increased to 70,000 cfs during the period of October 15 to April 30 of each year. This period would allow for spawning, incubation of eggs, and rearing of juvenile fish. After notice of the complaint was issued, several petitions to intervene were filed and the Licensee, Public Utility District No. 2 of Grant County, filed its answer opposing the relief sought.

Between two conferences our staff held on March 3, 1977, and October 17, 1978,[7] the Department filed a motion on October 5, 1978, requesting that the minimum flows from the Priest Rapids Project be increased from 36,000 cfs to 50,000 cfs. This motion was supported by

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[5] The Priest Rapids project consists of two dams, Priest Rapids and Wanapum.

[6] Article 45, 14 F.P.C. at 1074.

[7] In addition to the two conferences our staff has held concerning the complaint, a number of other conferences and meetings have been held among the parties under the auspices of the Columbia Committee on Fishery Operations. These meetings led to agreements under which certain steps, including spilling, were taken to insure the safe passage of juvenile fish during past annual spring migration runs.

the Oregon Fish and Wildlife Commission, the Yakima Indian Nation, Idaho Fish and Game Commission, and the National Marine Fisheries Service. This motion was filed for the same reason the complaint was filed—to protect chinook salmon spawning and incubation areas—but subsequent to a joint study conducted by the Department and Public Utility District No. 2 of Grant County.[8]

PUD No. 2 of Grant County in its answer stated that the Department had failed to set forth facts in support of its request for a hearing. Grant County further stated that it believed that the measures taken during the 1977 spawning season were successful and should be continued for another year, with certain modifications. Under that 1977 scheme of regulation, minimum flows of 36,000 cfs were periodically released from the Priest Rapids Dam.

Consolidation

Because the matters and issues raised by the complaint are closely related to or subsumed within those raised by the more recent petitions, we will consolidate the complaint and petitions for consideration in a single proceeding. All of the parties earlier permitted to intervene with respect to Docket No. E-9569 will also be deemed intervenors with respect to the petitions in the consolidated proceeding.[9]

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[8] That study culminated in Technical Report No. 38 entitled "The Effect of Daily Flow Fluctuations on Spawning Fall Chinook in the Columbia River." According to the Department's October 5, 1978, motion, the licensee has refused to modify the operation of the project in the manner recommended in the study.

[9] In addition to the three licensees, the Department, and the petitioners, these intervenors in Docket No. E-9569 are parties to the consolidated proceeding:

The Washington Water Power Company; Puget Sound Power & Light Company; Portland General Electric Company; Pacific Power & Light Company; the Cities of Eugene, McMinnville, Milton-Freewater, and Forest Grove, Oregon; State of Oregon

Hearing Issues

We find that it is appropriate and in the public interest that a hearing be held to investigate whether the operation of the projects listed above should be modified in the interest of protecting the fishery resources of the Columbia River. The following issues shall be considered during the hearing:

(1) the extent, if any, to which the current minimum flow at the Priest Rapids Project No. 2114 should be increased for the purpose of protecting the chinook salmon spawning and incubation areas downstream from the dam;

(2) the ways, if any, in which the operations of Projects Nos. 943, 2114, 2145, and 2149 should be modified in the interest of protecting chinook, sockeye, and coho salmon, and steelhead trout which must pass these mid-Columbia projects (including determinations of any appropriate instantaneous and daily average minimum flows and spilling percentages); and

(3) all other associated issues raised by the Washington Department of Fisheries' complaint in Docket No. E-9567, the Department's motion filed October 5, 1978, and the petitioners' motions filed on December 4 and 15, 1978.

As we noted earlier, the licensees argue that the Commission lacks the authority to require changes in minimum flows without their consent. For example, P.U.D. No. 2 of Grant County argues that Article 39 of its Project No. 2114 license does not grant the Commission the authority to amend Article 45, which specifies a mini-

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Fish and Wildlife Commission; City of Seattle, Washington; City of Tacoma, Washington; Cowlitz County Public Utility District; State of Idaho Fish and Game Commission; and the Confederated Tribes of the Umatilla Indian Reservation.

mum flow of 36,000 cfs.[10] The licensees' arguments, however, are without merit.

Article 39 of the license for Project No. 2114 provides:

> *The licensee shall* construct, operate and maintain or shall arrange for the construction, operation and maintenance of such fish ladders, fish traps, fish hatcheries, or other fish facilities or fish protective devices for the purpose of conserving the fishery resources, and *comply with such reasonable modifications in project* structures and *operations* in the interest of fish life in connection with the project as may be prescribed hereafter by the Commission upon recommendations of the Secretary of the Interior, the Washington State Departments of Fisheries and Game and the licensee. [15 F.P.C. 1005, 1006 (1956). Emphasis added.]

Flow releases are unquestionably an element of "project operations", which we may reasonably modify in the interest of fish life.[11]

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[10] Article 45 provides:

> The licensee shall so regulate the flow from Project No. 2114 that it will not result in flows of less than 36,000 cubic feet per second of water at the Hanford Works of the Atomic Energy Commission except when conditions are beyond the licensee's control.

Grant County P.U.D. also argues that an agreement it entered with the Department on September 16, 1963, bars the Department from seeking any relief. That agreement, however, has never been approved by the Commission and in no way binds us. In any event, we may investigate the matters at issue here on our own motion, under Article 18 of the Project No. 2114 license. See p. 7 *infra*.

[11] Article 45 of the Project No. 2114 license is irrelevant to the issue of flow releases for protecting fish life. That article sets a *minimum* flow for the purpose of ensuring the safe operation of the downstream Hanford Nuclear Plant. It does not establish a ceiling on minimum flows for other purposes, nor was it designed to provide sufficient protection for fish life.

In any event, the licensees also overlook the standard article contained in each of the four licenses which provides:

> . . . the operations of the licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations . . . as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for *other beneficial public uses, including recreational purposes*, and *the licensee shall release water* from the project reservoir *at such rate* in cubic feet per second, *or such volume* in acre-feet per specified period of time, . . . *as the Commission may prescribe for the . . . purposes* [other than navigation] *hereinbefore mentioned.* [Emphasis added.][12]

The words "other beneficial public uses, including recreational purposes" are taken directly from Section 10(a) of the Federal Power Act. In *Udall* v. *FPC*, 387 U.S. 428 (1967), the Supreme Court ruled beyond cavil that this language includes the purpose of protecting anadromous fishery resources (specifically including salmon and steelhead trout).

In light of these open-ended license articles, we find that we have ample authority to require modifications to the projects' operations to provide the relief the complainant and petitioners seek, or other relief that may prove necessary or desirable. The licensees' contentions that such modifications would alter their licenses without

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[12] Project No. 2114, Art. 18 [14 F.P.C. 1067, 1072 (1955)]; Project No. 2145, Art. 18 [18 F.P.C. at 35]; Project No. 2149, Art. 18 [28 F.P.C. 128, 132 (1962)]; see generally 16 F.P.C. 1121, 1125 (1956). Project No. 943, Art. 14 [51 F.P.C. at 1151-52].

their consent, in violation of Section 6 of the Federal Power Act, are not well taken.

The issuance of a license does not relieve the Commission from ensuring throughout the term of the license that fishery resources are protected and enhanced. During the term of a license, changes in circumstances or available information may well demand reappraisal of the ways in which the project as originally conceived may be kept best adapted to a comprehensive plan of development. This is precisely why we include open-ended conditions in the project licenses. A modification under such an open-ended license article is not an alteration within the meaning of Section 6 of the Act requiring a licensee's agreement. Both the courts and Congress have recognized the Commission's authority to impose open-ended license conditions, which reserve our right to *impose* changes in project works or operations despite Section 6.[18] By accepting a license with open-ended conditions, a licensee agrees to make modifications the Commission might order under those conditions. If the licensee could later avoid the imposition of modifications ordered under an open-ended license condition simply by refusing to agree to them, the Commission's recognized reservation of rights would be vitiated.

Need for Expedited Hearing—Phase I

In providing for a hearing, we recognize that there have been extensive and continuing efforts to resolve the anadromous fish problems related to the construction and operation of the four mid-Columbia projects. The final solution to these problems may require a substantial amount of time for discovery, further studies, discussions among the parties, and hearings.

The immediate problem, however, concerns the impending Spring 1979 downstream migration of smolts during

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[18] *See* State of California v. FPC, 345 F.2d 917, 924-25 (9th Cir. 1965), *cert. denied*, 382 U.S. 941 (1965); H.R. Rep. No. 1643, 90th Cong., 2 Sess. 2 (1968); 114 Cong. Rec. 21440-41 (1968).

their journey seaward. According to the pleadings, the migration would begin around the middle of April and continue to the middle of June. With so little time available before migration begins, we find that due and timely execution of our responsibilities in this matter imperatively and unavoidably requires departures from our usual practice and procedure. Because the parties have been unable to resolve their differences over what measures should be required for this coming spring, we are directing the presiding administrative law judge to convene a prehearing conference in Portland, Oregon, on March 20, 1979, for the exlusive purpose of considering the issue of what interim measures, if any, should be imposed to protect the Spring 1979 downstream fish migration. If it appears to the presiding judge that the parties have been unable to resolve their differences over the proper operating regime during the Spring 1979 downstream fish migration by the end of the prehearing conference, he shall convene the hearing immediately and continue it until he has compiled a sufficient record to reach a decision on what measures should be required for this spring.[14] All parties should come to the hearing prepared to present oral evidence and to cross-examine any oral testimony by sworn witnesses.

We are delegating authority to establish the Spring 1979 interim operating measures to the presiding judge, who must render a decision on this phase of the hearing by April 13, 1979. The licensees must follow the presiding judge's decision on the interim measures. Those measures will go into effect immediately and will be stayed only by Commission action. Any party wishing to appeal or support the presiding judge's decision on interim measures must do so by filing its briefs, com-

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[14] The presiding judge and the parties should consider the extent to which those interim measures might best be adapted to any additional studies that may be desirable to develop information sufficient to reach a long-term solution to the mid-Columbia anadromous fish problems.

ments, or statements of position within fifteen days of issuance of the decision.

Hearing—Phase II

Further scheduling of hearings in the remainder of this proceeding will be the responsibility of the presiding judge. Moreover, as noted above, additional studies may be required before a long-term solution can be reached, and may even be needed before effective hearings can commence to consider what fish measures should be required for the remainder of the license terms. Moreover, interim operating measures may be necessary beyond the Spring 1979 downstream fish migration, to facilitate studies or to govern during the period prior to final Commission action in this proceeding. These matters, as well as the development of a complete record, will be left to the judgment of the presiding administrative law judge as part of the exercise of his delegated authority under Section 1.27 of our regulations.

The Commission orders:

(A) The complaint proceeding designated Docket No. E-9569, and the petitions discussed above and filed by petitioners in Projects Nos. 943, 2114, 2145, and 2149, are consolidated.

(B) Pursuant to the Federal Power Act, particularly Sections 4(g), 10(a), 10(g), 306, 307, 308, and 309, the licenses for Projects Nos. 943, 2114, 2145, and 2149, and the Commission's Rules of Practice and Procedure, a hearing shall be held in this proceeding respecting the issues discussed above, in accordance with the provisions of this order.

(C) The Commission's Rules of Practice and Procedure shall apply in this proceeding except to the extent they are modified and supplemented below.

(D) A prehearing conference shall be held commencing at 9:30 a.m. local time on March 20, 1979, in Judge Soloman's court room of the U.S. Courthouse, 620 S.W.

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Main, Portland, Oregon, to initiate the first phase of the hearing in this proceeding. The first phase will consider the interim operating measures necessary or desirable for Projects Nos. 943, 2114, 2145, and 2149 during the Spring 1979 downstream fish migration on the Columbia River.

(E) Under Section 309 of the Federal Power Act, 16 U.S.C. 825h, the Commission delegates to the designated presiding administrative law judge authority to order the licensees for Projects Nos. 943, 2114, 2145, and 2149, to modify the operations of those projects during the Spring 1979 downstream fish migration. The presiding judge's order on interim operating measures shall be issued no later than April 13, 1979. The effect of the presiding judge's order shall be stayed only by Commission action. Any party wishing to appeal or support the presiding judge's order shall file its brief, comments, or statement of position no later than 15 days from the issuance of that order.

(F) Any order of the presiding administrative law judge on modifications to the operations of Projects Nos. 943, 2114, 2145, and 2149, beyond the Spring 1979 downstream fish migration shall be effective immediately and be stayed only by Commission action. Any appeal from such an order must conform to Section 1.7(d) of the Commission's regulations.

(G) The licensees for Projects Nos. 943, 2114, 2145, and 2149, the complainant and intervenors in Docket No. E-9569, and the petitioners identified above shall all be permitted to participate in this consolidated proceeding.

(H) The Secretary shall cause prompt publication in the Federal Register of notice of the prehearing conference ordered in paragraph (D) above.

By the Commission

[SEAL]

KENNETH F. PLUMB,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Charles B. Curtis, Chairman;
Georgiana Sheldon,
Matthew Holden, Jr.,
and George R. Hall.

Project No. 2114

PUBLIC UTILITY DISTRICT NO 2
OF GRANT COUNTY, WASHINGTON

Project Nos. 943 and 2145

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

Project No. 2149

PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, WASHINGTON

Docket No. E-9569

STATE OF WASHINGTON, DEPARTMENT OF FISHERIES

vs.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

ORDER APPROVING INTERIM OFFER OF SETTLEMENT AS MODIFIED

(Issued March 20, 1980)

On March 7, 1979, the Commission consolidated several matters into the captioned proceeding which is to determine whether the operation of Project Nos. 943, 2114, 2145 and 2149 should be modified in the interest of protecting the fishery resources of the Columbia River, including, among other matters, determinations of appropriate flows at the Priest Rapids, Wanapum, Rock Island, Rocky Reach and Wells dams in the middle reaches of that river within the State of Washington. The Commission said that questions pertaining to studies and interim operating measures that may be required for a long-term resolution of the proceeding would be left to the judgment of an administrative law judge as part of the exercise of his delegated authority under § 1.27 of the Commission's Rules of Practice and Procedure.

On December 31, 1979, the PUDs[1], licensees of the foregoing projects, together with the United States Fish and Wildlife Service, the National Marine Fisheries Service, the Oregon Department of Fish and Wildlife and the Idaho Department of Fish and Game submitted an interim Offer of Settlement[2] to the presiding administrative law judge for comment and approval. The "Agreement" therein recites, among other matters,

> A five-year study program shall be conducted by the Public Utility Districts to investigate the effect

[1] Public Utility District No. 2 of Grant County, Washington; Public Utility District No. 1 of Chelan County, Washington; and Public Utility District No. 1 of Douglas County, Washington.

[2] The Offer of Settlement was negotiated by the parties and is obviously an interim measure designed to gather data, rather than a final resolution of appropriate flows.

of the projects and their operation on the downstream migration of juvenile salmonids, the methods of improving protection of natural production of salmonids, and the methods of improving and increasing semi-natural and artificial production of salmonids from the Mid-Columbia River.

Comments submitted by the Washington State Department of Fisheries and Department of Game (WDF/WDG), the State of Washington Department of Ecology, the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribes), the Confederated Tribes and Bands of the Yakima Indian Nation (Yakima Tribes) and the Commission staff counsel, generally recommend approval of the Offer of Settlement although, in some instances, the recommendations are conditioned upon certain clarifications. WDF/WDG, however, recommends its certification with "slight modifications" to the Commission for approval.

Responses to the comments were submitted by the parties sponsoring the Offer of Settlement, as well as by the staff counsel, and generally clarified that offer in the aspects requested. But the sponsoring parties rejected the modification proposed by WDF/WDG.[3] Thereafter, on March 4, 1980, the presiding judge modified the Offer of Settlement in accordance with the clarifications of the sponsoring parties; rejected the modification of WDF/WDG; ordered the Offer of Settlement effective, as so modified, as of that date[4]; and certified it, also as so modified, to the Commission for approval.[5] In doing so,

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[3] The Yakima Tribes, on the other hand, added their support to the modification.

[4] Pursuant to Ordering Paragraph (F) of the Commission's order of March 7, 1979.

[5] Pursuant to § 1.18(e)(4)(ii) of the Commission's Rules of Practice and Procedure. The judge noted, in this connection that counsel for Public Utility District No. 2 of Grant County, Washington, requested "expedited consideration" to permit bids to be

the judge said, "Final resolution [of the issues in this proceeding] will be possible only after the necessary data has been collected during the interim second stage."

The Offer of Settlement provides, among other matters, for the maintenance of specified flows at the five dams, and for spills at each of the dams that will begin on specified dates and will continue "for 30 days or until approximately 80% of the migrating juveniles have passed the dams, whichever is sooner." WDF/WDG, supported by the Yakima Tribes, request that the quoted language be modified so that the spills will continue "for 30 days or until the migrating juveniles have passed, whichever is later." Citing the treaties between the United States and the Umatilla and Yakima Tribes, as well as Section 10(a) of the Federal Power Act and certain decisions of the Supreme Court [6], they contend that "additional progressive destruction of the fish runs should not be consciously approved."

The PUDs respond that while the cited authorities can be read to require reasonable protection of the fishery resources of the Columbia River, those authorities do not require that the development and utilization of other water resources of that river be subordinated to the protection of *all* of the migrating juvenile salmonids. They say that the question of whether more fish are injured going through turbines, or falling over spillways, is one of the principal issues in this proceeding. And they point out that the 80% limitation in question is only one of several components of the five-year interim program, and

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solicited early in March for the purpose of altering the Priest Rapids spawning channel in time for the 1980 Spring migration.

[6] *Udall* v. *Federal Power Commission*, 387 U.S. 428 (1967), *Puyallup Tribe, Inc.* v. *Department of Game of Washington*, 433 U.S. 165 (1977) and *State of Washington* v. *Washington State Commercial Passenger Fishing Vessel Association*, —— U.S. ——, 61 L.Ed.2d 823 (1979).

that WDF/WDG "have suggested no specific [compensating] changes in the other components." The other parties sponsoring the Offer of Settlement explain, in this connection, that salmon tend to migrate in peaks approximating a bell-shaped curve, and that the spills are to be targeted at the peaks of the migrations to assure maximum protection of the fish with the available amounts of water:

> Spill would not commence until the initial 10 percent of the migrating fish had passed the PUD dams. As migrating builds and peaks, spill would gradually be increased to up to 20 percent per dam, and would be adjusted using available water until most of the fish had passed the dams. Under this regime, the amount of spill would parallel the distribution of the migrating populations; spill would be directed at the central 80 percent of the fish populations, but would not be provided for the initial 10 percent or final 10 percent of those populations.

The presiding judge said that it is not now possible to decide the relative merit of protecting only 80%, or the requested 100%, of the migrating juvenile salmonids, because there is no conclusive evidence as to whether the turbines or spillways are more deleterious to the fish, adding, that WDF/WDG does not attempt to justify its request for 100% protection as being factually superior. The presiding judge said one of the objectives of the proposed five-year study is to collect reliable information on which to base a decision as to whether turbines or spillways are more deleterious. And he concluded that WDF/WDG's proposal is not supportable as a matter of law for the reasons advocated by the parties sponsoring the Offer of Settlement.

We have considered the Offer of Settlement and the comments and responses of the parties, and we approve that offer as modified, and for the reasons set forth, in

the presiding judge's Certification of Settlement Agreement and Interim Order of Operating Procedures dated March 4, 1980. As the staff counsel indicated in her response to the comments, the proposed studies are designed to help answer the question of whether the spills lessen the mortality rate of the downstream migrants, and Section 9 of the Offer of Settlement provides for convening a settlement conference for the purpose of seeking modifications of the minimum flow or spill requirements. Therefore, depending upon the early results of the studies, the parties can request a settlement conference to increase or decrease the spills that are provided in the Offer of Settlement.

The Commission orders:

The interim Offer of Settlement submitted in this consolidated proceeding on December 31, 1979, is approved as modified and placed into effect by the presiding administrative law judge on March 4, 1980.

By the Commission.

[SEAL]

LOIS D. CASHELL,
Acting Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 2114

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

Projects Nos. 943 and 2145

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

Project No. 2149

PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, WASHINGTON

and

Docket No. E-9569

STATE OF WASHINGTON DEPARTMENT OF FISHERIES

vs.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

SUBMISSION OF OFFER OF SETTLEMENT

Pursuant to the provisions of Section 1.18 of the Commission's Rules of Practice and Procedure, the below listed parties submit the attached Offer of Settlement. This proceeding is currently before Presiding Judge Al-

len C. Lande, and it is requested that the Secretary transmit this offer to him.

EXPLANATION

These proceedings were initiated by a petition filed by various parties to amend the FERC licenses for the operation of Priest Rapids Project No. 2114, Wells Project No. 2149, Rock Island Project No. 943, and Rocky Reach Project No. 2145. These dams are located on the Columbia River in the State of Washington. By order of March 7, 1979, the Commission assigned the case to an Administrative Law Judge and directed that a hearing be held.

The proceeding was split into two phases for convenience of administration. Phase One was to deal with the then immediate problems of the project operations which should be maintained in the spring of 1979 to facilitate the migration of juvenile salmonids. As a result of a conference held in Portland, Oregon, a settlement for a term of one year was reached for that phase of the proceeding, which was accepted and implemented by order of the Administrative Law Judge on March 28, 1979.

Phase Two was to deal with the more long term solution of the flows to be maintained both for the downstream migration of juvenile salmonids and for the spawning of fall chinook salmon below Priest Rapids Dam. At the recommendation of the parties, Phase Two of the proceeding was itself split into two phases. The first phase was to deal with the flow requirements for fall chinook spawning, and has commonly been referred to as the "Vernita Bar" phase of this proceeding. On October 15, 1979, the Commission approved an uncontested offer of settlement which, in pertinent part, established a four year term of study to acquire the data needed for final resolution of the issues in the Vernita Bar phase.

In a settlement conference during the week of October 22, 1979, and at various times thereafter, the parties have engaged in negotiations for the purpose of reaching a settlement on the second phase of Phase Two, regarding those aspects of project operations affecting the downstream migration of juvenile salmonids. This has been commonly referred to as the "spring migration" phase, and covers the period from approximately April 15 through June 15. As a result of these negotiations, several of the parties have reached the attached Settlement Agreement, styled "Offer of Settlement."

It is to be emphasized that the concurrence of Grant, Douglas, and Chelan Public Utility Districts to be Settlement Agreement is conditioned upon its acceptance by the Commission in its entirety. Should the Commission be required to disapprove or alter any provisions of the Settlement Agreement as tendered, the Public Utility Districts would be required to withdraw their support for the Settlement Agreement and request a hearing on all of the issues pending before the Commission.

The attached Settlement Agreement covers a five year term, during which studies will be conducted by the Public Utility Districts to acquire the information necessary for a permanent resolution of the issues in the spring migration phase. During the term of the studies, minimum flows will be maintained as set forth in paragraph 2; and spill will be provided from the projects as provided for in paragraph 3. To better support the fishery resource during the term of the study and years immediately following, the Public Utility Districts have agreed to provide additional hatchery production of salmonids, as set forth in paragraph 4.

The Settlement Agreement has been circulated to the principal parties in interest to this proceeding. It is our understanding that the terms of the Settlement Agreement are acceptable to a substantial number of the parties, and that they are satisfied it provides a reasonable

resolution to the issues raised by the petitioners. Under the circumstances, we believe that submission of the attached Settlement Agreement is appropriate and that it should be approved by the Administrative Law Judge and the Commission as proposed.

REFERENCES

No testimony or exhibits have been filed in this proceeding. The record consists of the petitions of the various parties and the responses of Grant, Chelan and Douglas Public Utility Districts.

CONCLUSION

We respectfully request that you transmit this Offer of Settlement to the Presiding Administrative Law Judge in accordance with the provisions of Section 1.18. A draft of the proposed Commission order also is attached.

Respectfully submitted,

Public Utility District No. 2
of Grant County,

Public Utility District No. 1
of Chelan County, and

Public Utility District No. 1
of Douglas County

By /s/ Donald B. Myers
DONALD B. MYERS
Jones, Grey & Bayley
1400 Norton Building
Seattle, WA 98104
(206) 624-0900

For the
National Marine Fisheries
Service,

Oregon Department of Fish
& Wildlife,

Idaho Department of Fish
& Game,

United States Fish &
Wildlife Service

/s/ F. Lorraine Bodi
F. LORRAINE BODI
Staff Attorney,
NOAA General Counsel
1700 Westlake Ave. North
Seattle, WA 98109

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D.C., this 31st day of December, 1979.

/s/ William J, Madden, Jr.
WILLIAM J. MADDEN, JR.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 2114

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON,

Project Nos. 943 and 2145

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON,

Project No. 2149

PUBLIC UTILITY DISTRICT NO. 1
OF DOUGLAS COUNTY, WASHINGTON,

and

Docket No. E-9569

STATE OF WASHINGTON, DEPARTMENT OF FISHERIES,

vs.

PUBLIC UTILITY DISTRICT NO. 2
OF GRANT COUNTY, WASHINGTON

OFFER OF SETTLEMENT

UNDERSTANDINGS

1. On March 7, 1979, the Commission issued an order which provided for an investigation and a hearing regarding various petitions filed in these dockets seeking

certain minimum flow releases and spills from Projects Nos. 2114, 943, 2145, and 2149.

2. During the week of October 22, 1979, the parties engaged in negotiations for the purpose of reaching a settlement with regard to the various issues raised in these petitions regarding the flow requirements, spill and project operations for the downstream migration of juvenile salmonids. This has been commonly referred to as the "spring migration" phase, and covers the period from approximately April 15 through June 15. As a result of these negotiations, the parties have reached the Agreement set forth below.

3. The Agreement reached and the approval of this Agreement by either the Commission or the Presiding Administrative Law Judge shall not constitute an approval of or a precedent regarding any principle or issue in this or any other proceeding.

AGREEMENT

1. A five-year study program shall be conducted by the Public Utility Districts to investigate the effect of the projects and their operation on the downstream migration of juvenile salmonids, the methods of improving protection of natural production of salmonids, and the methods of improving and increasing semi-natural and artificial production of salmonids from the Mid-Columbia River. The studies to be performed in 1980 and possible studies for subsequent years are set out in Appendix A. The obligation to conduct the tests is subject to the availability of suitable and adequate numbers of test fish to be provided by the fisheries agencies.

The studies to be conducted in years following 1980, the priority of studies in yielding data material to resolution of the issues before the Commission in this proceeding and their experimental design will be determined by a majority of the Studies Committee composed of

three biologists representing the Public Utility Districts and three biologists representing all other parties. If there is no agreement on either the studies to be conducted or their design, then a decision on these questions will be made by a biologist who shall be acceptable to a majority of the Studies Committee. This person shall be chosen according to the issue before the Committee. The Studies Committee's recommendations, including recommendations to perform studies requiring expenditures in excess of the annual budgets referred to below, shall be submitted in writing to the PUDs at least annually, and not later than November 15. The Studies Committee or its designee(s) may review bids for the performance of studies and make recommendations to the PUDs on award of those contracts.

The cost of studies will be shared by the PUDs in such proporation or amounts as they shall agree among themselves, and the costs of study design, implementation and analysis shall not exceed $500,000 annually (1979 dollars), unless authorized by the Public Utility Districts. The cost limitation of $500,000 does not include operation and maintenance costs or capital expenditures for production facilities. The Studies Committee may recommend studies pertaining to reasonable structural changes as may be necessary for the installation and testing of prototype bypass systems, but may not recommend such installation for at least two years. The PUDs will consider recommendations by the Studies Committee for studies requiring expenditures in excess of $500,000 per year, and will authorize those studies that are likely to yield data material to resolution of the issues before the Commission in this proceeding and if prudent budgetary constraints permit. All parties to the proceeding, including staff, will be given a reasonable opportunity each year to review and comment upon specific study plans prior to their implementation.

The PUDs' agreement to study and test prototype bypass systems does not constitute agreement that such

by-pass systems are an appropriate long-term solution for protection of the fishery resource on the Mid-Columbia River.

2. As long as operation of the upstream federal projects and reservoirs does not prevent it, the daily average minimum flows to be maintained at each dam during the term of the studies shall be those determined in accordance with the following schedule.

	Apr. 1 Apr. 15	Apr. 16 Apr. 25	Apr. 26 Apr. 30	May 1 May 31	June 1 June 15
Wells	50,000	60,000	100,000	115,000	110,000
Rock Reach	50,000	60,000	100,000	115,000	110,000
Rock Island	60,000	60,000	110,000	130,000	110,000
Wanapum	60,000	60,000	110,000	130,000	110,000
Priest Rapids	60,000	60,000	110,000	130,000	110,000

3. Spill.

A. *Period.* The period for spill provided herein at each of the dams will begin on the following dates, and will continue for 30 days or until approximately 80% of the migrating juveniles have passed the dams, whichever is sooner. When 80% of the migrating juveniles has passed the dam will be determined by a majority of the Designated Representatives or, in the absence of a majority within a reasonable time, by the Studies Coordinator:

Project	Date
Wells	April 15
Rocky Reach	April 25
Rock Island	April 25
Wanapum	May 1
Priest Rapids	May 1

The date of commencement of the spill at each dam is subject to modification upon agreement by a Designated Representative of the Washington Departments of

Fisheries and Game, of the National Marine Fisheries Service, and of the Public Utility District responsible for operation of the dam.

B. *Amount.* The amount of water to be made available for spill shall not exceed on an annual basis the amounts determined for each dam by reference to Appendix B, lines 1 and 2.

C. *Rock Island.* When the main units of the first powerhouse are not in operation, the amount of water available for spill at Rock Island dam shall be reduced proportionately to the amount of reduction in dam-related mortality (as discussed below) from the Rock Island bulb turbines as compared with Kaplan turbines in use at projects in the Columbia River basin. The basis for comparison shall be the bulb turbine mortality test conducted at Rock Island during 1979 and any previously published turbine mortality data for projects in the Columbia River basin. The comparative review of test data will be accomplished by an Ad Hoc committee composed of two representatives of the fishery agencies (Charles Junge, Wesley Ebel), two representatives of the Public Utility Districts (Dan McKenzie, Donald Chapman), and one independent representative (Douglas Chapman). The Ad Hoc Committee shall review the reliability of the results of the tests, and shall use such results as are found to be reliable by a majority of the Committee. As determined by a majority of the Ad Hoc Committee, the amount of water to be made available for spill in connection with operation of the second powerhouse shall be calculated by multiplying the ratio of all mortalities at Rock Island that are affected by the spill to all mortalities at other dams in the Columbia River basin that are affected by spill by the amount of water otherwise determined to be available in accordance with Paragraph 3B. If the majority of the Ad Hoc Committee determines that a mortality such as forebay or tailrace mortality, is affected by spill but was not measured in the Rock

Island Test or the tests conducted at other dams in the Columbia River Basin, then a majority of the Ad Hoc Committee shall rely on its best estimate of that mortality in calculating the foregoing ratio. Use of the mortality data from other dams does not imply its reliability or acceptance for any other purpose.

During the period when one or more of the main units of the first powerhouse is in operation, spill shall be accomplished from Gate 1 (at a daily average rate of 2000 cfs during the period of spill and an instantaneous minimum flow of 1000 cfs) in accordance with Paragraph 3.D. The amount of water to be made available for spill in connection with operation of the first powerhouse shall be in addition to the amount of water made available for spill in connection with operation of the second powerhouse, provided that the total amount of spill shall not exceed that determined in accordance with Paragraph 3.B. This assumes that the first powerhouse will be used for peak load generation. In the event that its use is shifted from peak to base load generation, then a majority of the Ad Hoc Committee may make appropriate adjustments to the amount of spill to be made from Rock Island dam, up to the amounts otherwise provided for in Appendix B. If an emergency condition exists, the decision shall be made by the Designated Representatives or, in the absence of a majority within a reasonable period of time, by the Studies Coordinator.

D. *Use of Spill.* Water shall be spilled up to the amounts determined in accordance with Paragraph 3.B. and 3.C. above, as it is required to effectively move fish safely past the dams. The amount, timing of commencement and duration of spill required to move fish when they are present will be determined on a continuing basis by a majority of the Designated Representatives. If a majority of the Designated Representatives cannot be contacted within a reasonable amount of time, the decisions to begin and terminate spill, and the decision on

the amount of spill to be accomplished will be made by the Studies Coordinater, as described below at Paragraph 5, or by his designee, at each dam. Unless a greater amount of spill is authorized as described below, the amount of spill available daily will be limited to 10% of the daily average flow. During the period of peak migration and on written notice of not less than three working days to the Licensee by a majority of the Designated Representatives (or by the Studies Coordination when a majority of the Designated Representatives cannot be contacted for their approval within a reasonable time), the amount of spill may be increased to not more than 20% of the daily average flow. Consistent with project design, spill may be directed by the Designated Representatives (or the Studies Coordinator when a majority of the Designated Representatives cannot be contacted for their approval within a reasonable period of time) to be made from surface spill facilities.

E. *Supplemental Spill.* If at the conclusion of the 30-day spill period provided for in Paragraph 3.A 80% of the run has not passed a dam, then supplemental spill shall be available at that dam. The amount of supplemental spill shall be determined by the election of either (a) until 80% of the run has passed the dam, the previously unspilled portion of water provided in Paragraphs 3.B and 3.C, or (b) for a period of 15 days or until 80% of the run has passed, whichever is sooner, an amount of water determined in accordance with Appendix B, line 3. If the Designated Representatives elect option (b) for use at Rock Island Dam, then the amount of water to be made available shall be determined by applying the ratio calculated under Paragraph 3.C to the water volume determined by use of Appendix B, line 3. Use of the supplemental spill shall be in accordance with Paragraph 3.D. If 80% of the migrating juveniles have not passed the dam, and the water provided for in Paragraphs 3.B. and 3.C. has been exhausted by the end of

the 30-day period, then the Designated Representatives shall elect option (b). The determination of whether 80% have passed the dam and any election of supplemental spill shall be made not later than the end of the 30-day period provided for in Paragraph 3.A. by a majority of the Designated Representatives or, if a majority is not available within a reasonable period of time, by the Studies Coordinator. This determination and election shall be communicated to the PUDs by written notice and shall include a brief statement of the facts relied upon in making the determination.

4. *Hatchery Production.* During the term of the studies, the Public Utility Districts shall make available the following hatchery production capacity. During the term of the studies, each PUD shall bear the operation and maintenance expenses associated with the operation at its own facility subject to the reallocation of such expenses among the PUDs by their agreement. Expenses of the fisheries agencies in operation and maintenance which are attributable to the PUDs under this Agreement shall be subject to audit by the PUDs.

Wells Hatchery: 25,000 pounds of capacity for steelhead trout, or equivalent loading of other species.

Turtle Rock/Rocky Reach Annex: 75,000 pounds of capacity for fall chinook salmon, or equivalent loading of other races.

Priest Rapids: In addition to the foregoing, three sections of the Priest Rapids spawning channel shall be converted to rearing facilities according to the plan set forth in the CH2M Hill Mid-Columbia Production Optimization Study. The approximate capacity of this facility when completed shall be 75,000 pounds of fall chinook salmon or equivalent loading of other races. Except as provided below with respect to "Other facilities," and except in accordance with Paragraph 9, this shall be Grant PUD's sole obligation to provide hatchery produc-

tion or rearing facilities during the 5-year term of this Agreement. Utilization of the Priest Rapids spawning channel also may be subject to any orders entered by the FERC in licensing of additional units for Project No. 2114.

Other facilities: Up to four additional sections of the Priest Rapids spawning channel shall be made available for rearing facilities, developed with reuse of the water from the first three sections of the spawning channel. These sections will be available, at the election of the PUDs, to provide 25,000 additional pounds of capacity for fall chinook or equivalent loading of other races. It also will be available, at the PUDs election, to make up any capacity deficit (as discussed below) for Wells, Turtle Rock/Rocky Reach or Priest Rapids as those are described above.

In the alternative, to obtain this additional capacity, the PUDs may elect to utilize any existing unused hatchery/rearing capacity in the Columbia River basin. If such election is made, the fisheries agencies agree to make such unused capacity available for the PUDs use, the reasonable operating and maintenance expenses of which production shall be borne by the PUDs. In the event that the additional four sections of the Priest Rapids spawning channel are not capable of producing the additional 25,000 pounds of capacity and/or making up the capacity deficit for Wells, Turtle Rock/Rocky Reach or Priest Rapids, then it shall be produced in any unused capacity available in the Columbia River basin.

The determination of the species to be produced shall be the decision of the state, tribal and federal fishery agencies following consultation with the PUDs and the FERC Staff.

The production of 200,000 additional pounds as noted above shall neither impair nor reduce the effectiveness of the existing hatchery production commitments of the

PUDs. The means for achieving these production increases shall be reviewed in advance by the state, tribal and federal fishery agencies, and annually thereafter. In the event that the loading rate estimates for Wells or Turtle Rock/Rocky Reach hatcheries or the first three sections of the Priest Rapids spawning channel are in error, and it is not physically possible to maintain, with application of the best operation and maintenance practices to optimize production levels, the production capacities defined above and produce healthy fish suitable for release, then additional capacity shall be provided by the PUDs according to the elections stated above. The loading rates used in this evaluation shall not be less than those now used in hatcheries/rearing facilities operated by federal and state fisheries agencies under similar conditions.

Grant PUD shall use its best efforts to complete the improvement of the spawning channel at Priest Rapids for the 1980 brood year; provided, however, that if sufficient numbers of eggs are not available from the fisheries agencies improvements of the spawning channel need be made only to the extent that eggs are available for production. For this purpose, the fisheries agencies will advise Grant PUD as to egg availability by November 1, 1980, and on each November 1 thereafter for that brood year.

5. Subject to the approval of a majority of the Studies Committee, the Public Utility Districts will designate a Studies Coordinator to coordinate the studies to be conducted in accordance with Appendix A. The Studies Coordinator shall coordinate the preparation of reports of the studies conducted.

6. The agencies of the State of Washington which are parties to this proceeding shall provide such permits and authorizations as are required to perform the studies described in Appendix A. The agencies also shall support

the Public Utility Districts in obtaining such permits and authorizations as are required from other state and federal agencies to perform those studies.

7. The Public Utility Districts shall use their best efforts to publish a draft report of each year's studies, as described in Appendix A, by October 1 of the year following each migration season. Reports of any field study conducted pursuant to this Agreement by any of the parties to these proceedings with respect to the spring migration in the Mid-Columbia shall be made available upon request to the other parties and staff for review and comment before publication or general circulation. Comments to any draft report shall be provided by all parties (and the FERC Staff) not later than 60 days following publication of the draft report. A final report shall be prepared within 90 days of the close of the comment period. Comments submitted shall be accepted in the report, or incorporated as an appendix to the report. All reports shall be filed with the Federal Energy Regulatory Commission.

8. All parties shall have full access to all data generated by, and in, the course of the studies. Subject to the control and supervision of the Studies Coordinator, all equipment used in the course of the studies shall be subject to inspection and observation by authorized representatives of any of the parties.

9. The Hearing scheduled for January 28, 1980, shall be cancelled. At any time after the completion of the first year of study and the availability of any report of study results, any two parties to this proceeding (including the FERC staff) may, on thirty days' written notice to the other parties, convene a settlement conference for the purpose of seeking, on the basis of the available study results and reports, modifications to the minimum flow or spill requirements described above, provided that a majority of the Studies Committee has recommended it.

Additionally, at the end of three years of study, any two parties may request, upon notice as provided herein, further hatchery production for the remainder of the study term, provided that the incremental mortality (as measured above natural mortality) attributable to the Mid-Columbia River dam system (as measured from the confluence of the Okanogan to the head of McNary pool) is determined, on the basis of data considered by the Studies Committee to have a high level of reliability, to be greater than 62%. The comparison of 62% shall be to the average of the mean mortalities determined from the studies. The natural mortality rate for the Mid-Columbia (as calculated on a per-mile basis) shall be based on the mortality measured in the Hanford reach from the area below Priest Rapids Dam to the head of the McNary pool. For the purpose of this paragraph the system and natural mortality levels shall be determined from at least two years of system mortality studies which are designed to achieve a high degree or reliability, and for which sufficient numbers of test fish are made available by the fisheries agencies. The system mortality tests shall not be conducted during periods in which the flows are substantially greater or less than the flows specified in Paragraph 2.

Additionally, at the end of two years of study, any two parties may request, upon notice as provided herein, such reasonable structural modifications as may be necessary for the installation of prototype by-pass systems at one or more dams, provided that a majority of the Studies Committee has recommended it.

In the event that any two parties believe that the PUDs have unreasonably rejected a recommendation of the Studies Committee to perform studies requiring expenditures in excess of $500,000, they may request a settlement conference.

The notice required by this Paragraph shall include a specific statement of the change requested to the Settle-

ment Agreement and shall briefly describe the reasons for the change. Within ten days after receipt of said notice, any other party may give similar notice as to other changes which should be considered. In the event that the settlement conference is unable to reach a resolution, any two parties may petition the Administrative Law Judge or Commission to modify the requirements of this Agreement on the basis of the available study results and reports developed from the study program provided for by Paragraph 1.

The use of 62% system mortality as the basis for modifying this Agreement is not intended to be a standard for determining ultimate mitigation levels at the conclusion of the study period; nor does it imply that 200,000 pounds of hatchery production constitutes adequate mitigation if system mortality is less than 62%. Neither does this Agreement to provide hatchery production constitute any admission by the PUDs that any mitigation in addition to that now specified in the PUDs' licenses is required of the PUDs, or that the issue of mitigation is before the Commission in this proceeding.

10. On the completion of the term of study provided for by this Agreement, or by the Agreement as it may be amended, any party may petition the Presiding Administrative Law Judge or the Commission for the issuance of an order establishing further procedural dates in this portion of the proceeding.

APPENDIX A

STUDIES

The following studies will be undertaken in 1980 by the Public Utility Districts. Methods and specific objectives will be developed with open exchange of ideas and information between PUD and agency personnel. Timing and emphasis of post-1980 studies will depend on the recommendations of the Studies Committee and upon results of the 1980 studies.

The constraints on testing and studies include the following:

1. Gravity is to be used as much as possible in bypassing or transporting fish.

2. Hatchery fish to be used in studies which require active movement will be used when smolting and ATPase levels appear acceptable.

3. Insofar as possible, hatchery fish to be marked should be marked at least three weeks in advance of use in tests.

Studies in 1980:

A. *Increased Production:*

1. ATPase and smolt condition monitoring.

2. Acceleration of spawning (including hormonal and photo period alteration).

3. Preliminary hatchery siting, including literature review and site surveys on the Mid-Columbia River.

B. *Survival Augmentation.*

1. Evaluation of Rock Island bypass and study feasibility of collection.

2. Development of bypass systems using forebay skimming.
3. Airlift evaluation in gatewalls at Rocky Reach (coordinated with John Day).
4. Review feasibility of transport and imprinting.
5. Monitoring of migrant distribution using gatewell dipping and hydroacoustic application.

C. *Mortality Estimates*

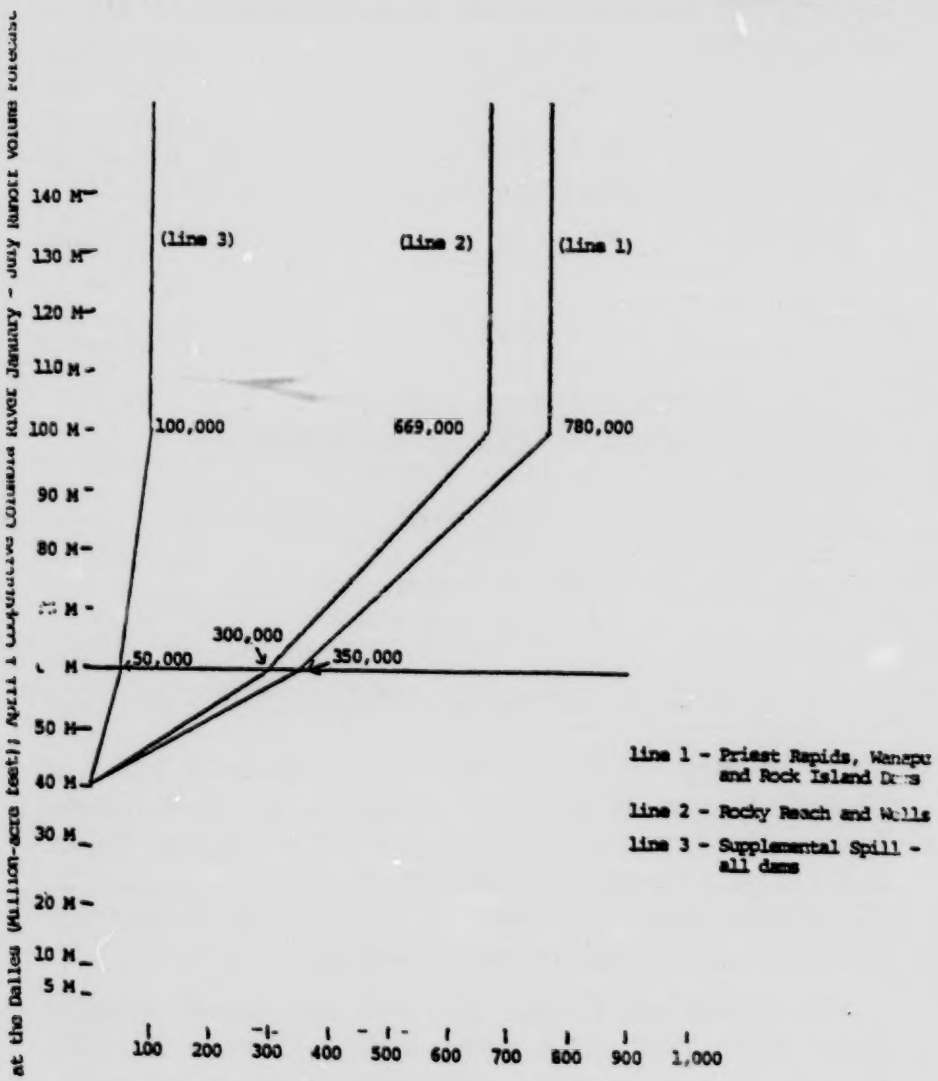
1. Wells turbine and spill studies shall have first priority in 1980.
2. Rocky Reach spill and turbine mortality.
3. System-wide and Hanford Reach mortalities.
4. If required and test fish are available, mortalities in connection with Wanapum sluiceway (unless this problem is alleviated through structural modifications at Wanapum).

Possible Studies After 1980 May Include the Following:

1. Continue migrant monitoring and implement hydroacoustics.
2. Mortality in skim spills.
3. Turbine and Project mortalities at Wanapum, Priest Rapids and first powerhouse Rock Island.
4. Continue studies of spawning acceleration.
5. Initiate transport pilot studies.
6. Effectiveness of split gates—Rock Island.
7. Evaluate collection and bypass at Rock Island.
8. Semi-natural rearing at Priest Rapids and Wells.

9. Annual evaluation of system-wide and Hanford Reach mortality.
10. Habitat, seeding and rearing in tributaries.
11. Data evaluation, coordination and modeling.
12. Predation study leading to management-scale tests.
13. Preliminary hatchery siting, including literature review and site surveys in non-Mid-Columbia areas, if Mid-Columbia River sites are not available.

APPENDIX B


at the Dalles (Million-acre feet) April 1 Cooperative Columbia River January - July Runoff Volume Forecast
140 M
130 M
120 M
110 M
100 M
90 M
80 M
50 M
40 M
30 M
20 M
10 M
5 M
(line 3)
(line 2)
(line 1)
100,000
669,000
780,000
300,000
50,000
350,000
line 1 - Priest Rapids, Wanapu and Rock Island Dams
line 2 - Rocky Reach and Wells
line 3 - Supplemental Spill - all dams
100
200
300
400
500
600
700
800
900
1,000

C. Notice of Issuance of Annual License

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 943

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

Notice of Issuance of
Annual License(s)

(January 4, 1980)

On January 18, 1977, Public Utility District No. 1 of Chelan County, Washington, Licensee for Rock Island Project No. 943, located on the Columbia River in Chelan and Douglas Counties, Washington, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 943 was issued effective January 21, 1930, for a period ending January 20, 1980. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Public Utility District No. 1 of Chelan County, Washington.

Take notice that an annual license is issued to Public Utility District No. 1 of Chelan County, Washington for the period January 21, 1980 to January 20, 1981, or until the issuance of a new license for the project, whichever

comes first, for the continued operation and maintenance of the Rock Island Project No. 943, subject to the terms and conditions of the original license. Take further notice that if issuance of a new license does not take place on or before January 20, 1981, a new annual license will be issued each year therafter, effective January 21 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB
Secretary

DC-A-18